

**To:** Kupchan, Simma[Kupchan.Simma@epa.gov]; Nguyen, Quoc[Nguyen.Quoc@epa.gov]  
**From:** Mitschele, Becky  
**Sent:** Fri 3/31/2017 12:23:24 AM  
**Subject:** FW: FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)  
FINAL Instructions for Handling CAFO Information Related to AFBF 3-30-17.pdf

Email is making the rounds...congrats to you two for the settlement!!

**From:** Smith, DavidW  
**Sent:** Thursday, March 30, 2017 4:26 PM  
**To:** Mitschele, Becky <Mitschele.Becky@epa.gov>  
**Subject:** FW: FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)  
**Importance:** High

David Smith

Manager

NPDES Permits Section (WTR-2-3)

U.S. EPA Region 9

75 Hawthorne Street

San Francisco, CA 94602

(415) 972-3464 (office)

(415) 972-947-3545 (fax)

**From:** Kermish, Laurie  
**Sent:** Thursday, March 30, 2017 3:56 PM  
**To:** Greenberg, Ken <Greenberg.Ken@epa.gov>; Smith, DavidW <Smith.DavidW@epa.gov>  
**Cc:** Busterud, Gretchen <Busterud.Gretchen@epa.gov>; Dreyfus, Bethany <Dreyfus.Bethany@epa.gov>  
**Subject:** FW: FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)

**Importance:** High

Ken and David, this is in relation to future FOIAs regarding certain CAFOs. I figured your groups may be the ones to see such FOIAs so this is a heads up.

Laurie Kermish

CWA Section Chief

Office of Regional Counsel (ORC-2)

U.S. EPA, Region 9

75 Hawthorne St.

San Francisco, CA 94105

(415) 972-3917

(415) 947-3570 (fax)

[kermish.laurie@epa.gov](mailto:kermish.laurie@epa.gov)

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**From:** Busterud, Gretchen

**Sent:** Thursday, March 30, 2017 1:14 PM

**To:** Kermish, Laurie <[Kermish.Laurie@epa.gov](mailto:Kermish.Laurie@epa.gov)>

**Cc:** Dreyfus, Bethany <[Dreyfus.Bethany@epa.gov](mailto:Dreyfus.Bethany@epa.gov)>

**Subject:** FW: FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)

**Importance:** High

Laurie –

Just a heads-up in case we receive an assignment for this FOIA. Not sure we had anyone working on this litigation -- ?

Gretchen

**From:** Dreyfus, Bethany  
**Sent:** Thursday, March 30, 2017 1:09 PM  
**To:** Busterud, Gretchen <[Busterud.Gretchen@epa.gov](mailto:Busterud.Gretchen@epa.gov)>  
**Subject:** FW: FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)  
**Importance:** High

Hi Gretchen. Do you know who the SME is on this in our office? We should forward it to them in case a FOIA comes through without us noticing.

-----  
Bethany Dreyfus

EPA Region IX ORC-3

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San Francisco, CA 94105

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**From:** Johnson, Ivry  
**Sent:** Thursday, March 30, 2017 12:54 PM  
**To:** Busterud, Gretchen <[Busterud.Gretchen@epa.gov](mailto:Busterud.Gretchen@epa.gov)>; Lieben, Ivan <[Lieben.Ivan@epa.gov](mailto:Lieben.Ivan@epa.gov)>  
**Cc:** Leon, Sandra <[Leon.Sandra@epa.gov](mailto:Leon.Sandra@epa.gov)>; Dreyfus, Bethany <[Dreyfus.Bethany@epa.gov](mailto:Dreyfus.Bethany@epa.gov)>; Glenn, William <[Glenn.William@epa.gov](mailto:Glenn.William@epa.gov)>; Henderson, Alita <[Henderson.Alita@epa.gov](mailto:Henderson.Alita@epa.gov)>

**Subject:** FW: FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)

**Importance:** High

FYI

**From:** Gottesman, Larry

**Sent:** Thursday, March 30, 2017 12:46 PM

**To:** Newton, Jonathan <[Newton.Jonathan@epa.gov](mailto:Newton.Jonathan@epa.gov)>; Hamilton, Sabrina <[Hamilton.Sabrina@epa.gov](mailto:Hamilton.Sabrina@epa.gov)>; Sandfoss, Kristina <[Sandfoss.Kristina@epa.gov](mailto:Sandfoss.Kristina@epa.gov)>; Kennedy, Chandra <[Kennedy.Chandra@epa.gov](mailto:Kennedy.Chandra@epa.gov)>; Malloy, Marilyn <[Malloy.Marilyn@epa.gov](mailto:Malloy.Marilyn@epa.gov)>; Newman, Maya <[Newman.Maya@epa.gov](mailto:Newman.Maya@epa.gov)>; Cedeno-Zambrano, Lorena <[Cedeno-Zambrano.Lorena@epa.gov](mailto:Cedeno-Zambrano.Lorena@epa.gov)>; Williams, LaShawn <[williams.lashawn@epa.gov](mailto:williams.lashawn@epa.gov)>; Levine, Scott <[Levine.Scott@epa.gov](mailto:Levine.Scott@epa.gov)>; Barnett-Owens, Inga <[Barnett-Owens.Inga@epa.gov](mailto:Barnett-Owens.Inga@epa.gov)>; Evanko, Peter <[Evanko.Peter@epa.gov](mailto:Evanko.Peter@epa.gov)>; McLendon, Wanda <[McLendon.Wanda@epa.gov](mailto:McLendon.Wanda@epa.gov)>; Jones-Coleman, Diane <[Jones-Coleman.Diane@epa.gov](mailto:Jones-Coleman.Diane@epa.gov)>; Schena, Cristeen <[Schena.Cristeen@epa.gov](mailto:Schena.Cristeen@epa.gov)>; Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>; Tate, Rita <[Tate.Rita@epa.gov](mailto:Tate.Rita@epa.gov)>; Gross, Louann <[Gross.LouAnn@epa.gov](mailto:Gross.LouAnn@epa.gov)>; Wheatley, Jessica <[wheatley.jessica@epa.gov](mailto:wheatley.jessica@epa.gov)>; Ho, Nancy <[Ho.Nancy@epa.gov](mailto:Ho.Nancy@epa.gov)>; Stevens, Edie <[Stevens.Edie@epa.gov](mailto:Stevens.Edie@epa.gov)>; Albano, Emily <[Albano.Emily@epa.gov](mailto:Albano.Emily@epa.gov)>; Engels, Alan <[engels.alan@epa.gov](mailto:engels.alan@epa.gov)>; Johnson, Ivry <[Johnson.Ivry@epa.gov](mailto:Johnson.Ivry@epa.gov)>; Kercheval, Stephanie <[Kercheval.Stephanie@epa.gov](mailto:Kercheval.Stephanie@epa.gov)>  
**Cc:** Miller, Kevin <[Miller.Kevin@epa.gov](mailto:Miller.Kevin@epa.gov)>; Nguyen, Quoc <[Nguyen.Quoc@epa.gov](mailto:Nguyen.Quoc@epa.gov)>; Floyd-Coleman, Cynthia <[Floyd-coleman.cynthia@epa.gov](mailto:Floyd-coleman.cynthia@epa.gov)>; Person, Linda <[Person.Linda@epa.gov](mailto:Person.Linda@epa.gov)>; Schumacher, Wendy <[schumacher.wendy@epa.gov](mailto:schumacher.wendy@epa.gov)>; Lewis, Judith <[Lewis.Judith@epa.gov](mailto:Lewis.Judith@epa.gov)>

**Subject:** FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)

**Importance:** High

I have attached instructions for responding to future FOIA requests that seek concentrated animal feeding operation information (CAFO), at issue in the recently settled AFBF v. EPA FOIA litigation.

Quoc Nguyen from the Office of General Counsel, General Law Office, will be participating in our HQ FOIA Coordinators' meeting on April 4 and our Regional FOIA Officers' call in April 13 to answer your questions. Please disseminate this email and instructions to your FOIA professionals, as appropriate.



Thank you so much for your help in this matter. Please call me if you have any questions.

Larry F. Gottesman

Agency FOIA Officer

202-566-2162 (Direct line)

Ex. 6 - Personal Privacy Mobile)

**Instructions for Handling Concentrated Animal Feeding Operations Information Related to AFBF v. EPA, No. 13-1751 (D. Minn.)  
March 30, 2017**

The Agency recently settled a reverse-Freedom of Information Act (FOIA) case involving certain information related to concentrated animal feeding operations and facilities (CAFOs) for 36 states. Specifically, on March 24, 2017, the U.S. District Court in the District of Minnesota entered a Stipulation of Settlement and Dismissal (Settlement Agreement) in AFBF v. EPA, No. 13-1751 (D. Minn.). See Appendix A, Settlement Agreement.

**The Settlement Agreement requires your attention in the event future FOIA requests seek the information at issue in the settled case.**

Pursuant to the Settlement Agreement, EPA agreed to provide written instructions to Headquarters FOIA Coordinators and Regional FOIA Officers. The instructions below address how the Agency should respond to future FOIA requests for the information at issue in the settled case.

**INSTRUCTIONS**

***Information addressed by this instruction:*** The information at issue in the settled case was the set of 73 documents or spreadsheets responsive to two FOIA requests submitted by Earthjustice (EPA-HQ-2012-001337) and the Natural Resources Defense Council and the Pew Charitable Trusts (EPA-HQ-2013-001516). See Appendix B, the two FOIA requests. The Office of Water's Office of Wastewater Management collected this information about CAFOs from twenty-seven state permitting authorities, eight state websites, EPA databases, and EPA regional offices. The Office of Wastewater Management responded to the two FOIA requests (EPA-HQ-2012-001337 and EPA-HQ-2013-001516) and produced redacted information from the 73 documents or spreadsheets through FOIAonline. The following links will direct you to the Agency's final response to these two requests:

- 1) EPA-HQ-2012-001337:  
<https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d28000843a>
- 2) EPA-HQ-2013-001516:  
<https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d28001613d>

Provided below are examples of FOIA requests the Agency has received that specifically sought the 73 documents or spreadsheets at issue in the settled case.

*Language from FOIA requests seeking the 73 documents or spreadsheets:*

- "Freedom of Information Act request for information related to the withdrawal of the CAFO Reporting Rule, from Eve C. Gartner, Esq, Earthjustice, dated September 11, 2012."

- “Freedom of Information Act request for disclosure of records [related to the withdrawal of the CAFO Reporting Rule]...from Claire Althouse [or Jon Devine], Natural Resources Defense Council, dated October 24, 2012.”
- “All records responsive to FOIA requests 2012-1337 and 2013-1516.”
- “[A]ny records...to the proposed NPDES CAFO Reporting Rule (76 Fed. Reg. 65,431 (Oct. 21, 2011)).”

***Instructions for handling CAFO FOIA requests seeking the 73 documents or spreadsheets at issue in the settled case:*** If EPA receives a FOIA request seeking the 73 documents or spreadsheets or to which the 73 documents or spreadsheets, as described above (*see* “Information addressed by this instruction”), are responsive, you are to respond by referring the requester(s) to FOIAonline and referencing the response provided to EPA-HQ-2012-001337 and EPA-HQ-2013-001516. Please refer to the public URL links above.

If you have any questions, please contact Jenny Molloy, Office of Water, at 202-564-1939 or Quoc Nguyen, Office of General Counsel, at 202-564-6342.

**APPENDIX A: Settlement Agreement**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 13-1751 (ADM/TNL)

AMERICAN FARM BUREAU  
FEDERATION, and NATIONAL PORK  
PRODUCERS COUNCIL

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY, and GINA MCCARTHY,<sup>1</sup>  
Administrator U.S. Environmental Protection  
Agency,

Defendants,

and

FOOD & WATER WATCH,  
ENVIRONMENTAL INTEGRITY  
PROJECT, AND IOWA CITIZENS FOR  
COMMUNITY IMPROVEMENT,

Intervenors.

**STIPULATION OF SETTLEMENT  
AND DISMISSAL**

WHEREAS, on July 5, 2013, Plaintiffs, the American Farm Bureau Federation (“AFBF”) and National Pork Producers Council (“NPPC”) (together, “Plaintiffs”), filed their Complaint for Declaratory and Injunctive Relief (“Complaint”), alleging a claim under the Administrative Procedure Act and seeking an Order enjoining the U.S.

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<sup>1</sup> Scott Pruitt is now the Administrator of EPA. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Mr. Pruitt should be substituted for Gina McCarthy as defendant in this suit.

Environmental Protection Agency (“EPA”) from disclosing certain information (referred to herein as the “disputed information”) in response to Freedom of Information Act (“FOIA”) requests submitted by Earthjustice (EPA-HQ-2012-001337) and the Natural Resources Defense Council and the Pew Charitable Trusts (EPA-HQ-2013-001516).

WHEREAS, the disputed information consists of a set of 73 documents (“disputed information”) that EPA collected from twenty-seven state permitting authorities, eight state websites, EPA databases, and EPA regional offices, following the Agency’s determination to compile reliable information about concentrated animal feeding operations (“CAFOs”) in the United States using existing data sources rather than promulgating a rule requiring CAFOs to submit information directly to EPA.

WHEREAS, in this lawsuit, Plaintiffs allege that portions of the disputed information are protected by Exemption 6 of the FOIA, which pertains to “[p]ersonnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6).

WHEREAS, the disputed information consists of data pertaining to animal feeding operations, which is aggregated by state, for the following states: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.

WHEREAS, the disputed information was filed in the administrative record in this matter, at ECF. No. 69, Exhibits 16 and 32.

WHEREAS, Plaintiffs, AFBF and NPPC, and Defendants, Administrator Scott Pruitt and EPA, wish to avoid any further litigation and controversy and to settle and

compromise fully any and all claims and issues that have been raised, or could have been raised in this action, which have transpired prior to the execution of this Stipulation of Settlement and Dismissal ("Stipulation").

Now, therefore, the parties, by and through their respective counsel, hereby settle and compromise the above-captioned lawsuit. The parties stipulate that this matter is hereby settled and compromised on the following terms:

1. Defendants agree that only the columns reflecting permit status, city, county, and 5-digit zip code in the disputed information, which, as defined above, consists of 73 documents set forth at ECF No. 69, Exhibits 16 and 32, will be released in response to the FOIA requests at issue in this case, EPA-HQ-2012-001337 and EPA-HQ-2013-001516. All other columns and fields in the disputed information will be redacted pursuant to 5 U.S.C. § 552(b)(6).

2. Defendants have provided, and Plaintiffs have reviewed, the disputed information with the agreed-upon redactions, and those redactions are attached hereto as Exhibit A.

3. Defendants also agree to release the same redacted disputed information, as set forth in Exhibit A, in response to the following pending FOIA requests submitted to EPA Headquarters that seek the disputed information: (1) EPA-HQ-2013-006737; (2) EPA-HQ-2013-006604; (3) EPA-HQ-2013-004128; (4) EPA-HQ-2013-008906; (5) EPA-HQ-2013-007430; (6) EPA-HQ-2013-006913; (7) EPA-HQ-2013-004097; (8) EPA-HQ-2015-004064; (9) EPA-HQ-2015-006732; and (10) EPA-HQ-2016-008563.

Defendants further agree to post the redacted disputed information, responsive to the

FOIA requests identified in Paragraphs 1 and 3, to FOIAonline ([www.FOIAonline.regulations.gov](http://www.FOIAonline.regulations.gov)), consistent with 5 U.S.C. § 552(a)(2)(D).

4. Within 7 calendar days of the execution of this Stipulation, Defendants will provide the redacted disputed information, set forth at Exhibit A, in response to the FOIA requests identified in Paragraphs 1 and 3 above.

5. Within 7 calendar days of the execution of this Stipulation, Defendants will request in writing that the FOIA requesters in EPA-HQ-2012-001337 and EPA-HQ-2013-001516 return to EPA or destroy all copies of any previous responses to those FOIA requests and cease any further or ongoing dissemination of the same.

6. This Stipulation does not bind Defendants with respect to its response to any FOIA request other than the FOIA requests identified in Paragraphs 1 and 3 of this Stipulation. Within 7 calendar days of execution of this Stipulation, Defendants agree to provide written instruction to EPA's Regional and Headquarters FOIA coordinators that if they receive a FOIA request seeking the disputed information, as defined above, they are to respond by referring the requester(s) to FOIAonline and referencing the response provided to EPA-HQ-2012-001337 and EPA-HQ-2013-001516. This instruction will also be included in the training described below in paragraph 7.

7. Defendants agree to conduct training for managers in EPA's Office of Water and Regional and Headquarters FOIA coordinators regarding the Agency's obligations under the FOIA and the Privacy Act. Among other things, the training will focus on Exemption 6 of the FOIA, the Privacy Act, and other relevant privacy issues. The training will be conducted in the 2017 calendar year.

8. Plaintiffs agree to dismiss this lawsuit with prejudice. Such dismissal shall be effected via the stipulation of voluntary dismissal with prejudice per Fed. R. Civ. P. 41(a)(1)(A)(ii) that is attached hereto as Exhibit B. The parties shall file with the Court such stipulation of dismissal within ten business days of execution of this Stipulation.

9. This Stipulation constitutes the full and complete satisfaction of any and all claims on behalf of Plaintiffs arising from (a) the allegations set forth in the complaint filed in this lawsuit and (b) any litigation or administrative proceeding that Plaintiffs have brought, could bring, or could have brought against Defendants regarding the specific FOIA requests identified in Paragraphs 1 and 3 of this Stipulation, including all claims for attorneys' fees and costs. Any and all remaining claims and issues in this litigation are released and waived by all parties.

10. This Stipulation does not constitute an admission of liability or fault on the part of Defendants, the EPA, or its agents, servants, or employees, and this Stipulation shall not be construed as an admission of liability or fault. This Stipulation is entered into by both parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks of further litigation. This Stipulation will not be used in any manner to establish liability for fees, amounts, or hourly rates, in any other case or proceeding.

11. This Stipulation is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

12. Each party will bear its own attorney's fees and costs.



13. The undersigned attorneys are authorized to enter into this Stipulation of Settlement on behalf of their respective clients.

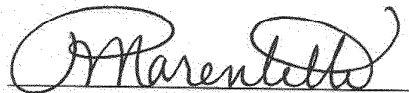
14. This Stipulation may be executed in counterparts as if executed by both parties on the same document.

[Signatures next page]

U.S. ENVIRONMENTAL PROTECTION AGENCY &  
E. SCOTT PRUITT, ADMINISTRATOR

GREGORY G. BROOKER  
Acting United States Attorney  
District of Minnesota

BY:



Pamela A. Marentette  
Assistant United States Attorney

DATE: March 23, 2017

AMERICAN FARM BUREAU FEDERATION

BY:

Ellen Steen,  
General Counsel & Secretary

DATE: \_\_\_\_\_

NATIONAL PORK PRODUCERS COUNCIL

BY:

Michael Formica,  
Assistant Vice President & Counsel, Domestic Policy

DATE: \_\_\_\_\_



**EARTHJUSTICE**

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES  
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

**RECEIVED**  
SEP 12 2012

September 11, 2012

By Email: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566-1667 FAX (202) 566-2147  
E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

Re: Freedom of Information Request for information related to the withdrawal of the  
CAFO Reporting Rule

Dear Freedom of Information Officer:

Earthjustice submits this request for records in accordance with the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In accordance with FOIA, please provide us with the following records relating to the rule proposed by the Environmental Protection Agency ("EPA") on October 21, 2011, under section 308 of the Clean Water Act, to collect information about concentrated animal feeding operations (CAFOs) (the "CAFO Reporting Rule"), and the withdrawal of the CAFO Reporting Rule announced by EPA on July 20, 2012:

1. All records, including all communications, shared or otherwise maintained between EPA and any other governmental agency (including, but not limited to, the United States Department of Agriculture and/or the United States Geological Survey) relating to the CAFO Reporting Rule and/or the 2012 withdrawal of the CAFO Reporting Rule ;
2. All records reflecting any communication, written or verbal, between the EPA and any private party, corporation or non-profit organization (including, but not limited to, the National Pork Producers Council, the American Farm Bureau Federation, the National Chicken Council, the U.S. Poultry & Egg Association, and the National Milk Producer's Federation) relating to the CAFO Reporting Rule and/or the 2012 withdrawal of the CAFO Reporting Rule;
3. All records created or updated since November 28, 2008, relating to EPA's evaluation of information publicly available about CAFOs in the United States.
4. All records, including, but not limited to, all communications and records identifying, discussing, mentioning, describing, reporting or analyzing, the July 2012 memorandum of understanding (MOU) entitled "Collaborative Efforts to Collect and

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Exchange Information about Concentrated Animal Feeding Operations" entered into between EPA and the Association of Clean Water Administrators;

5. All records relating to how EPA will obtain information about CAFOs in states for which current site-specific information about CAFOs is not available on the internet, including, at a minimum, CAFOs in Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Puerto Rico, U.S. Virgin Islands, West Virginia, Georgia, Illinois, Minnesota, Kansas, Nevada, Alaska, Idaho, and Washington;
6. All records relating to and/or identifying existing sources of information about CAFOs, including the AFOs themselves, and EPA's proposed and intended data collection process for gathering that information.

The use of the word "record" above includes, but is not limited to, documents in all forms (including electronic), information, emails, faxes, letters, comments, reports, summaries of telephone conversations, handwritten notes, meeting minutes, or any other materials. **EPA need not produce documents that are part of the docket for the CAFO Reporting Rule (Docket EPA-HQ-QW-2011-0188) as posted on Regulations.gov.**

The use of the word "unredacted" above means that we are seeking full disclosure of all information in the requested record. In the event that you determine that you can disclose only some of the information contained in a record that falls within the scope of this request, please provide us with a copy of the record with only the information that you have determined to be properly treated as confidential redacted.

If any information requested herein was, but is no longer, in EPA's possession or subject to its control, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred voluntarily or involuntarily to others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding and authorization for such disposition of it and state the date or approximate date of it.

If you claim that any of the foregoing information is exempt from mandatory disclosure, we respectfully request that you:

- (1) Provide an index of all documents containing the requested information, reflecting the date, author, addressee, number of pages, and subject matter of such documents;
- (2) State the exemption you deem to be applicable to each information request;
- (3) State with particularity the reason why such exemption is applicable to each information request;
- (4) Examine each information request to determine if reasonably segregable non-exempt information exists which may be released after redacting information deemed to be exempt; and
- (5) Exercise your discretion to release such records notwithstanding the availability of a basis for withholding.

#### **FEE WAIVER REQUEST**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), we request a fee waiver because "disclosure of the requested information is in the public interest because it is likely to contribute significantly to

public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *Id.* As demonstrated below, each of the four factors related to the first fee waiver requirement, as specified in EPA’s FOIA regulations at 40 C.F.R. § 2.107(l)(2)(i)-(iv), weigh in favor of granting our fee waiver request.

***Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.***

The subject matter of the requested records concerns “identifiable operations or activities of the Federal government,” 40 C.F.R. § 2.107(l)(2)(i), insofar as the requests relate to EPA’s proposal to promulgate the CAFO Reporting Rule and its subsequent decision to withdraw is proposal to promulgate such a rule.

***Factor 2: Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities.***

Disclosure of the requested records is “likely to contribute” to an “increased public understanding,” 40 C.F.R. § 2.107(l)(2)(ii), of government operations or activities because such disclosure will enable the requester to understand why EPA decided to withdraw the CAFO Reporting Rule, and how EPA expects to be able to develop facility-specific information about all the CAFOs in the United States, including facility location and basic operational characteristics that relate to how and why a facility may discharge, without requiring CAFOs to report this information to EPA. This information is not already accessible through EPA’s website. *See* Factor 4, below.

***Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience of Persons Interested in How the Government Decided Not to Require CAFOs to Report and in How the Government Will Identify CAFOs that Are Discharging, But Are Not in the NPDES Program***

Disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in” learning about the Government’s efforts to regulate CAFOs under the Clean Water Act, and how EPA can comply with its mandates under the Clean Water Act without gathering the information it would have received under the CAFO Reporting Rule. This is because Earthjustice, the requesting organization, is a national nonprofit environmental law firm which has made safeguarding the environment, including especially the nation’s waters, one of its top priorities and has developed expertise in this area. In order to further its work to protect the nation’s waters, Earthjustice has brought numerous lawsuits seeking to enforce the Clean Water Act, and filed several Clean Water Act petitions with EPA. *See, e.g., Coeur Alaska, Inc. v. Southeast Alaska Conservation Council*, 557 U.S. 261 (2009) (counsel of record for respondents Southeast Alaska Conservation Council, et al. in case involving the discharge of wastewater into Lower Slate Lake); *Friends of Everglades v. South Florida Water Management Dist.*, 570 F.3d 1210 (11th Cir. 2009) (representing plaintiffs in case involving pumping of polluted water into Lake Okeechobee); *Petition under the Clean Water Act to Establish Toxicity Criteria and Require Toxicity Testing and Public Disclosure of Ingredients for Products on the National Contingency Plan Product Schedule* (Oct. 13, 2010),

[http://earthjustice.org/sites/default/files/files/dispersant\\_petition\\_0.pdf](http://earthjustice.org/sites/default/files/files/dispersant_petition_0.pdf). In addition, Earthjustice has filed or intervened in several lawsuits involving pollution emanating from CAFOs. *See, e.g., Waterkeeper Alliance v. EPA*, No. 09-1017 (D.C. Cir. Jan. 15, 2009) (representing petitioners in challenge to regulations exempting from reporting air releases of hazardous substances from animal waste at farms); *Rose Acre Farms, Inc. v. NC Department of Environment and Natural Resources*, No. 12-CVS-10 (Super. Ct. Hyde Cty March 2, 2012) (representing intervenors on side of State agency defending decision to require egg CAFO to operate under NPDES permit). Because of our expertise in this area, Earthjustice is well-prepared to analyze and evaluate the records we receive pursuant to this request and assess them in the context of the statutory mandates of the Clean Water Act and the information already available to EPA about CAFOs, and determine whether EPA's can fulfill its Clean Water Act obligations with respect to CAFOs in light of the decision to withdraw the CAFO Reporting Rule.

In addition to being able to analyze the information provided to determine whether EPA's actions can be reconciled with its obligations under the Clean Water Act, Earthjustice has the "ability and intention to convey this information to the public." 40 C.F.R. § 2.107(l)(2)(iii). Earthjustice can publicize information received from this request – and its analysis of whether the withdrawal of the CAFO Reporting Rule is consistent with the EPA's Clean Water Act's mandates -- in its monthly electronic newsletter, which serves approximately 223,000 subscribers. Earthjustice also can utilize its online action alert system to urge members of the public to contact policymakers and ask them to take action based on information received from this request; typically, 15,000 to 20,000 individuals respond to such alerts. Finally, Earthjustice's full-time health campaigner can disseminate newsworthy information obtained from this request to the media, and Earthjustice's full-time health lobbyist can provide relevant information obtained from this request to elected officials in Washington..

**Factor 4: The Contribution to Public Understanding of Government Operations or Activities Will Be Significant.**

The public's understanding of government operations or activities related to EPA's knowledge of pollution caused by CAFOs and whether EPA has an adequate plan for determining which CAFOs are discharging pollutants into waters of the United States, "as compared to the level of public understanding existing prior to disclosure, [will] be enhanced by the disclosure to a significant extent." 40 C.F.R. § 2.107(l)(2)(iv). Because so little is publicly known or understood about EPA's plan for learning about, and addressing, discharges from CAFOs in the absence of the CAFO Reporting Rule, public understanding of these efforts will undoubtedly be enhanced to a significant extent by disclosures in response to this request.

In addition, the second fee waiver requirement – that the request "is not primarily in the commercial interest of the requester," 40 C.F.R. § 2.107(l)(1) – is also met here. The requester, Earthjustice, is a 501(c)(3) nonprofit organization and does not have any "commercial interest that would be furthered by the requested disclosure" of information.<sup>1</sup> 40 C.F.R. § 2.107(l)(3)(i).

<sup>1</sup> Indeed, the legislative history of the fee waiver provision reveals that it was added to FOIA "in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests," in particular those from journalists, scholars and nonprofit public interest groups. *See Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984).

Indeed, Requester's sole interest in obtaining the requested information is to broaden public understanding of why EPA withdrew the CAFO Reporting Rule, and whether EPA has a reasonable plan in place to learn about which CAFOs are likely discharging, and to undertake advocacy efforts related to improving EPA's regulation of CAFOs under the Clean Water Act, if appropriate.

In sum, this request meets the requirements for a fee waiver. In the event that fees are not waived, please notify and inform us of the basis for your decision.

#### INSTRUCTIONS FOR RECORD DELIVERY

To the extent that the requested records are available in a readily accessible electronic format, we would prefer to receive the documents electronically, either by email or on a CD. If electronic copies are unavailable, we will accept paper copies. Please send records to Eve C. Gartner at [egartner@earthjustice.org](mailto:egartner@earthjustice.org), or mail them to:

Eve C. Gartner, Esq.  
Earthjustice  
156 William St., Suite 800  
New York, NY 10038-5326

As FOIA requires, we expect your response within twenty working days of your receipt of this request. In the event that you have any questions concerning the type of materials we are interested in receiving, please contact me by email or by telephone at 212-791-1881 ext. 8222.

Thank you for your assistance in this matter.

Sincerely,



Eve C. Gartner

RECEIVED  
SEP 12 2012



new FOIA request  
Eve C. Gartner to: FOIA HQ

09/12/2012 10:07 AM

Dear Sir or Madam –

Attached please find a FOIA request related to the withdrawal by EPA of the CAFO Reporting Rule announced on July 20, 2012.

Many thanks for your attention to this matter.

Eve Gartner

Eve C. Gartner  
Staff Attorney  
Earthjustice  
156 William Street  
Suite 800  
New York, New York 10038  
T: 212-791-1881 ext. 8222  
F: 212-918-1556  
[www.earthjustice.org](http://www.earthjustice.org)

Because the earth needs a good lawyer

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FOIA to EPA - Withdrawal of Reporting Rule-final.pdf



**APPENDIX B: NRDC/PEW FOIA Request (EPA-HQ-2013-001516)**



**FOIA Request- NRDC and Pew Charitable Trusts**

Althouse, Claire to: FOIA HQ

Cc: "Devine, Jon", Julie Janovsky

, Nathaniel Keller

10/24/2012 06:16 PM

To Whom It May Concern:

I write on behalf of the Natural Resources Defense Council and the Pew Charitable Trusts to request disclosure of records pursuant to the Freedom of Information Act and EPA FOIA regulations. Attached, please find a copy of correspondence mailed today concerning the above-mentioned request.

Sincerely,

Claire Althouse

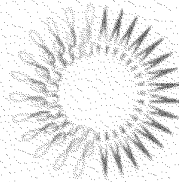
--

Claire Althouse  
Policy Analyst • Water Program  
Natural Resources Defense Council  
1314 Second Street  
Santa Monica, CA 90401  
T: (310) 434-2300  
F: (310) 434-2399

 Please consider the environment before printing this email.



Pew-NRDC CAFO FOIA 10-24-12.pdf



THE  
**PEW**  
CHARITABLE TRUSTS

October 24, 2012

Via Regular Mail and Electronic Mail to:

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

**Re: Freedom of Information Act Request for Records Related to EPA's Ability to  
Protect the Public from Concentrated Animal Feeding Operations' Pollution**

To Whom It May Concern:

On behalf of the Natural Resources Defense Council ("NRDC") and the Pew Charitable Trusts, we write to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"),<sup>1</sup> and the Environmental Protection Agency ("EPA") FOIA regulations.<sup>2</sup>

NRDC is comprised of more than 1.3 million members and online activists and over 350 lawyers, scientists, and advocates who are committed to protecting our natural resources for health and future generations. This includes protecting our nation's water supply from pollution caused by animal agriculture.

The Pew Charitable Trusts' Campaign to Reform Industrial Animal Agriculture is dedicated to advancing pollution control policies to mitigate waste from animal agriculture and create a new system that is less damaging to the environment, rural communities and human health.

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<sup>1</sup> 5 U.S.C. § 552.

<sup>2</sup> 40 C.F.R. 2.100 ff.

## **I. Description of Records Sought**

NRDC and the Pew Charitable Trusts ask that EPA please produce all records<sup>3</sup> in EPA's possession, custody or control relating to EPA's withdrawal of the proposed National Pollutant Discharge Elimination System ("NPDES") Concentrated Animal Feeding Operation ("CAFO") Reporting Rule ("Reporting Rule").<sup>4</sup>

These records should include, without limitation:

1. Any records pertaining to the Reporting Rule that are not contained in the public docket for that rule that were submitted to EPA by: The American Farm Bureau Federation, The National Pork Producers Council, The National Cattlemen's Beef Association, The United Egg Producers, The U.S. Poultry & Egg Association, The National Council of Farmer Cooperatives, The National Milk Producers Federation, The National Chicken Council, the National Turkey Federation, The National Corn Growers Association, or any other agricultural trade association.
2. Any records providing factual information concerning the completeness, accuracy, and public accessibility of states' CAFO information in the following areas:
  - a. The legal name of the owner of the CAFO or an authorized representative, their mailing address, email address, and primary telephone number,
  - b. The legal name and address of the CAFO owner/operator, if the name and address of an authorized representative is provided above,
  - c. The location of the CAFO's production area, identified by latitude and longitude and street address,
  - d. If the owner or operator has NPDES permit coverage, the date of issuance of coverage under the NPDES permit, and the permit number,
  - e. For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered area, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more,
  - f. Where the owner or operator land applies manure, litter, and process wastewater, the total number of acres under the control of the owner or operator available for land application,
  - g. If the CAFO is a contract operation, the name and address of the integrator,

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<sup>3</sup> The term "records" is used herein to mean anything denoted by the use of that word or its singular form in the text of FOIA. In particular, the term includes, but is not limited to, all writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored) including, but not limited to, correspondence, minutes of meetings, memoranda, notes, e-mails, notices, facsimiles, charts, tables, presentations, orders and filings.

<sup>4</sup> National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule, 76 Fed. Reg. 65,431 (Oct. 21, 2011) (Docket No. EPA-HQ-OW-2011-0188) [hereinafter *CAFO Reporting Rule*].

- h. Type and capacity of manure storage used at the CAFO.
  - i. Quantity of manure, process wastewater, and litter generated annually by the CAFO,
  - j. If the CAFO land-applies, whether it implements a nutrient management plan for land application,
  - k. If the CAFO land-applies, whether it employs nutrient management practices and keeps records on site consistent with 40 CFR 122.23(e),
  - l. If the CAFO does not land apply, alternative uses of manure, litter and/or wastewater, and
  - m. Whether the CAFO transfers manure off site, and if so, the quantity transferred to recipient(s) of transferred manure.
3. Any records that provide any of items 2.a-m, above, for any CAFO in the U.S.

## **II. Request for Fee Waiver**

NRDC and the Pew Charitable Trusts request that EPA waive the fee that it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be furnished without any charge or at a reduced charge if A) “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government,” and B) “is not primarily in the commercial interest of the requester.”<sup>5</sup> The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as a “representative of the news media” entitled to a reduction of fees under FOIA.<sup>6</sup>

### **A. Disclosure is in the Public Interest and would Contribute Significantly to Public Understanding of the Operations of the Government**

FOIA dictates that a fee waiver should be granted when a disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government.”<sup>7</sup> The records described above shed light on a matter of considerable public interest and concern: the extent to which EPA has the capacity to effectively mitigate water pollution from CAFOs.

As EPA pointed out in the proposed Reporting Rule, “pollutants from manure, litter, and process wastewater can affect human health and the environment.”<sup>8</sup> EPA noted that “despite more than 35 years of regulating CAFOS, reports of water quality impacts from large animal feeding

<sup>5</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 40 CFR 2.107(l).

<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(iii)(II); 40 CFR 2.107(d).

<sup>7</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 40 CFR 2.107(l).

<sup>8</sup> CAFO Reporting Rule, *supra* note 4, at 65,433.

operations persist.”<sup>9</sup> Pollutants commonly found in CAFO waste include nutrients, pathogens, heavy metals, and pharmaceuticals.<sup>10</sup> These pollutants cause toxic algal blooms, human disease, and human reproductive problems.<sup>11</sup> It is of great public concern that waste containing these pollutants is effectively managed and contamination of water resources is avoided.

The Government Accountability Office recommended in a 2008 report to Congress that EPA “should complete the Agency’s effort to develop a national inventory of permitted CAFOs” because “EPA has neither the information it needs to assess the extent to which CAFOs may be contributing to water pollution, nor the information it needs to ensure compliance with the Clean Water Act.”<sup>12</sup> EPA withdrew the Reporting Rule, which would have gathered information EPA needs to perform its duty of protecting public health and water quality. It is therefore in the public interest to determine what “operations or activities” the EPA plans to use to deal with the staggering lack of information about CAFOs and the persistent pollution affiliated with these facilities.

The tailored request in this letter seeks disclosure of important records concerning EPA’s activities that will contribute meaningfully and significantly to public understanding of CAFO pollution. Disclosure of these records will contribute “significantly” to public understanding because NRDC and the Pew Charitable Trusts will disseminate summary and analysis of any newsworthy information conveyed in the requested records.

As a not for profit organization, the Pew Charitable Trusts is well-equipped to analyze and disseminate the requested information, and may use this information to contribute to the public’s understanding of the EPA’s withdrawal of the proposed NPDES CAFO Reporting Rule. The Pew Charitable Trusts could disseminate that information in a number of ways including through the Pew Charitable Trusts’ website, <http://www.pewtrusts.org>, Pew Environment Group’s website, <http://www.pewenvironment.org>, and its publication *The Latest*, which has a circulation of nearly 120,000 people. In addition, it could distribute the information through the state and national media by way of press releases or other media for general public consumption.

NRDC publishes information in its magazine, *OnEarth*, which is distributed to over 150,000 subscribers, for sale to newsstands and bookstores, and free of charge at <http://www.nrdc.org/onearth>. NRDC also has the ability to disseminate information on CAFO pollution through its website, <http://www.nrdc.org>, which is updated daily and draws approximately 2.5 million page views and 700,000 visits per month; its *Nature’s Voice* newsletter on current environmental issues, distributed five times a year to NRDC’s

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<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> U.S. Gov’t Accountability Office, *Concentrated Animal Feeding Operations: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality*, GAO-08-944 5 (2008), page 48.



approximately 650,000 members and online at <http://www.nrdc.org/naturesvoice/>, and other newsletters and alerts. NRDC's *Earth Action* email list has more than 165,000 subscribers who receive biweekly information on urgent environmental issues. This information is also made available through NRDC's online Action Center at <http://www.nrdc.org/legislation/legwatch.asp>. *This Green Life* is an electronic newsletter on environmentally sustainable living distributed by email to 55,000 subscribers and made available online at <http://www.nrdc.org/thisgreenlife/>. NRDC issues press releases; participates in press conferences and interviews with reporters and editorial writers; and has over twenty staff members dedicated to communications work.<sup>13</sup> Finally, NRDC employees provide Congressional testimony, appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books.<sup>14</sup>

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

1. NRDC obtained through a court-enforced FOIA request records of the operations of Bush Administration's Energy Task Force, headed by Vice President Dick Cheney. It made those records available, along with analysis of selected excerpts and links to the administration's index of withheld documents, on NRDC's website at <http://www.NRDC.org/air/energy/taskforce/tfinx.asp>. NRDC's efforts helped to inform the public about an issue that, even before the records' release, had attracted considerable attention.<sup>15</sup>
2. NRDC obtained through a FOIA request a memorandum by ExxonMobil advocating the replacement of a highly respected atmospheric scientist, Dr. Robert Watson, as the head of the Intergovernmental Panel on Climate Change. NRDC used this memorandum to

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<sup>13</sup> See "Communications" staff list at <http://www.nrdc.org/about/staff.asp>.

<sup>14</sup> See, e.g., Tammy Weber, *EPA Can't Regulate Livestock Farms it Can't Find*, Huffington Post, [http://www.huffingtonpost.com/2012/08/02/epa-cant-regulate-livestock\\_n\\_1732414.html](http://www.huffingtonpost.com/2012/08/02/epa-cant-regulate-livestock_n_1732414.html) (Aug. 2, 2012) (quoting NRDC Senior Attorney Jon Devine); Kristin Eberhard and Evan Gillespie, "How LADWP can do right by Angelenos," Op-Ed, L.A. Times (Sept. 11, 2012) (co-authored by NRDC Western Energy and Climate Program Legal Director Kristin Eberhard; Alice Park, "Waste Not," Time Magazine (Sept. 10, 2012) (quoting NRDC Senior Scientist Allen Hershkowitz); Steve Scher, "Food: Why Americans Waste So Much and Ways to Stop," KOUW (Seattle Public Radio), Aug. 30, 2012 (featuring NRDC Scientist Dana Gunders); "Weighing Benefits and Pitfalls of Increased Oil and Gas Production in the U.S.," PBS NewsHour, Aug. 10, 2012 (featuring NRDC Senior Attorney Kate Sinding); "Clean Air in California: What's it Going to Take?" 2012 Environmental Law Conference at Yosemite, Oct. 28, 2012 (featuring NRDC Attorney Adrian Martinez).

<sup>15</sup> See, e.g., Elizabeth Shogren, *Bush Gets One-Two Punch on Energy*, L.A. Times (Mar. 28, 2002), at A22; Bennett Roth, *Houston Energy-Drilling Firm Appears in Documents from Energy Department*, Houston Chronicle (Apr. 12, 2002).

help inform the public about what may have been behind the decision by the Bush Administration to replace Dr. Watson.<sup>16</sup>

3. NRDC incorporated information obtained through FOIA into a 2005 report, published and provided free of charge at NRDC's website,<sup>17</sup> on the impacts of military sonar and other industrial noise pollution on marine life.<sup>18</sup>

Disclosure of the requested documents is "likely to contribute significantly to public understanding" of EPA's activities concerning CAFO pollution<sup>19</sup> because NRDC intends to disseminate any newsworthy information in the released records, and its analysis of such records, to its member base and to the broader public, through one or more of the many communications channels referenced above. As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

**B. NRDC and the Pew Charitable Trusts have no Commercial Interest that would be Furthered by the Requested Information**

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request<sup>20</sup> because "Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'"<sup>21</sup> NRDC and the Pew Charitable Trusts are not-for-profit organizations and, as such, have no commercial interest.

NRDC's and the Pew Charitable Trusts' primary interest in obtaining the above records is to serve the public by disclosing presently non-public information about EPA's ability to protect the public from CAFO pollution. As previously discussed, CAFOs are a significant source of water pollution, and waste from CAFOs contains substances that are hazardous to humans and the environment. Because CAFOs are potentially so harmful to human health and natural places, it is in the public interest to examine how EPA plans to protect against the harmful effects of CAFO pollution.

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<sup>16</sup> See NRDC Press Release and Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," (Apr. 3, 2002); Elizabeth Shogren, *Charges Fly Over Science Panel Pick*, L.A. Times (Apr. 4, 2002).

<sup>17</sup> See <http://www.nrdc.org/wildlife/marine/sound/contents.asp>.

<sup>18</sup> See NRDC, *Sounding the Depths II* (Nov. 2005) (update to a 1999 report). Since the report's publication, the sonar issue has continued to attract widespread public attention. See, e.g., D. Fleshler, "Navy testing could devastate whales and dolphins, groups say," Ft. Lauderdale Sun Sentinel, July 13, 2012.

<sup>19</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>20</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 40 CFR 2.107(l)(3).

<sup>21</sup> *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted).

### C. NRDC is a Media Requester

Even if EPA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA.<sup>22</sup> As described previously in this request, NRDC publishes a quarterly magazine, *OnEarth*, which has more than 150,000 subscribers and is available at newsstands and bookstores; publishes a periodic newsletter for its more than 650,000 members nationally; issues regular electronic newsletters, action alerts, public reports and analyses; and maintains a free online library of reports and analyses. These publications routinely include information about current events of interest to the readership and the public. NRDC staff members are also regular contributors to numerous periodicals, books, and the NRDC Switchboard blog, <http://www.switchboard.nrdc.org/>; television, radio, and web programs; and hearings and conferences. CAFO pollution specifically has been featured in some of NRDC's media outlets.<sup>23</sup> As previously noted, information obtained as a result of this request will, if appropriately newsworthy, be disseminated through one or more of NRDC's publications or other suitable channels.

### III. Willingness to Pay Fees Under Protest

Please provide the records above irrespective of the status and outcome of your evaluation of NRDC's and the Pew Charitable Trusts' fee category assertion and fee waiver request. In order to prevent delay in EPA's provision of the requested records, NRDC and the Pew Charitable Trusts state that they will, if necessary and under protest, pay fees in accordance with 40 CFR 2.107. Please consult with me, however, before undertaking any action that would cause the fee to exceed \$500. Such payment will not constitute any waiver of NRDC's and the Pew Charitable Trusts' right to seek administrative or judicial review of any denial of its fee waiver request and/or rejection of its fee category assertion.

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<sup>22</sup> 5 U.S.C. § 552(a)(4)(A)(ii); 40 CFR 2.107(d).

<sup>23</sup> See, e.g., Posting of Jon Devine to NRDC Switchboard Blog, *EPA Chickens Out by Dropping Industrial Livestock Information Collection Effort*, (July 24, 2012), <http://switchboard.nrdc.org/blogs/idevine/epa-chickens-out-by-dropping-i.html>; Dan Rosen, *Cow Woes*, *OnEarth Magazine* (Aug. 26, 2012), available at <http://www.onearth.org/article/cow-woes>.



#### IV. Conclusion

We trust that, in responding to this request, EPA will comply with all relevant deadlines and other obligations set forth in FOIA and EPA's regulations.<sup>24</sup>

To the extent that the requested records are available in a readily accessible electronic format, we would prefer to receive documents electronically, either by email or on a CD. If electronic copies are unavailable, we will accept paper copies. Please send records to Jon Devine at [jdevine@nrdc.org](mailto:jdevine@nrdc.org), or mail them to:

Jon Devine  
NRDC  
1152 15<sup>th</sup> Street NW, Suite 300  
Washington, DC 20005

Please produce records on a rolling basis; at no point should EPA's search for or deliberations concerning certain records delay the production of others that EPA has already retrieved and is obliged to produce.

In the event that EPA concludes that some of the records requested above may already be publicly available, we will be happy to discuss those conclusions in an effort to narrow the scope of this request.

Thank you for your prompt attention to this request.

Sincerely,



**Jon P. Devine, Jr.**  
Senior Attorney  
Natural Resources Defense Council  
202-289-6868  
[jdevine@nrdc.org](mailto:jdevine@nrdc.org)



**Karen Steuer**  
Director, Government Relations  
Pew Environment Group  
202-887-8818  
[ksteuer@pewtrusts.org](mailto:ksteuer@pewtrusts.org)

---

<sup>24</sup> See 5 U.S.C. § 552; 40 CFR 2.100 ff.

**To:** Nguyen, Quoc[Nguyen.Quoc@epa.gov]  
**Cc:** Kupchan, Simma[Kupchan.Simma@epa.gov]; Nagle, Deborah[Nagle.Deborah@epa.gov];  
Magruder, DeMara[Magruder.Demara@epa.gov]  
**From:** Molloy, Jennifer  
**Sent:** Thur 3/30/2017 6:21:55 PM  
**Subject:** RE: FOIA Response Letters for Signature  
[EPA Response 30Mar2017 EPA-HQ-2012-001337.pdf](#)  
[EPA response 30Mar2017 EPA-HQ-2013-001516.pdf](#)

Here are the letters. They have gone out via e-mail from FOIAonline. The records aren't closed out yet. I'm trying to find someone who can help me navigate that process.

Jenny

Jenny Molloy

U.S. EPA

Water Permits Division

202.564.1939

molloy.jennifer@epa.gov

**From:** Nagle, Deborah  
**Sent:** Thursday, March 30, 2017 1:39 PM  
**To:** Nguyen, Quoc <Nguyen.Quoc@epa.gov>  
**Cc:** Molloy, Jennifer <molloy.jennifer@epa.gov>  
**Subject:** Re: FOIA Response Letters for Signature

Jenny has the signed letters. She will send you the scanned letters

Sent from my iPhone

On Mar 30, 2017, at 12:36 PM, Nguyen, Quoc <[Nguyen.Quoc@epa.gov](mailto:Nguyen.Quoc@epa.gov)> wrote:

You guys rock. THANK YOU!

**From:** Nagle, Deborah  
**Sent:** Thursday, March 30, 2017 12:36 PM  
**To:** Nguyen, Quoc <[Nguyen.Quoc@epa.gov](mailto:Nguyen.Quoc@epa.gov)>  
**Cc:** Molloy, Jennifer <[molloy.jennifer@epa.gov](mailto:molloy.jennifer@epa.gov)>  
**Subject:** RE: FOIA Response Letters for Signature

Working on it now

**From:** Nguyen, Quoc  
**Sent:** Thursday, March 30, 2017 12:15 PM  
**To:** Nagle, Deborah <[Nagle.Deborah@epa.gov](mailto:Nagle.Deborah@epa.gov)>; Molloy, Jennifer <[molloy.jennifer@epa.gov](mailto:molloy.jennifer@epa.gov)>  
**Cc:** Miller, Kevin <[Miller.Kevin@epa.gov](mailto:Miller.Kevin@epa.gov)>; Levine, MaryEllen <[levine.maryellen@epa.gov](mailto:levine.maryellen@epa.gov)>; Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>  
**Subject:** FOIA Response Letters for Signature  
**Importance:** High

Hi Deborah,

## Ex. 5 - Deliberative Process

## Ex. 5 - Deliberative Process

These steps need to be completed by COB today. **Is this achievable?**

Thank you so much for all of your work in this case. PLEASE CALL ME IF YOU HAVE ANY QUESTIONS. I will be in a meeting from 1:00 – 2:00, but I will carry my personal cell Ex. 6 - Personal Privacy to the meeting.

Sincerely,

Quoc

Quoc P. Nguyen

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-564-6343

PRIVILEGED COMMUNICATION for internal deliberation only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

**From:** Nagle, Deborah  
**Sent:** Thursday, March 30, 2017 10:53 AM  
**To:** Nguyen, Quoc <Nguyen.Quoc@epa.gov>  
**Subject:** RE: article on settlement agreement

Thanks

**Ex. 5 - Deliberative Process**

**From:** Nguyen, Quoc  
**Sent:** Thursday, March 30, 2017 10:10 AM  
**To:** Levine, MaryEllen <levine.maryellen@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Nagle, Deborah <Nagle.Deborah@epa.gov>; Molloy, Jennifer <molloy.jennifer@epa.gov>; Marentette, Pamela (USAMN) <Pamela.Marentette@usdoj.gov>  
**Subject:** article on settlement agreement

FYI

**From:** Gottesman, Larry  
**Sent:** Thursday, March 30, 2017 10:03 AM  
**To:** Nguyen, Quoc <Nguyen.Quoc@epa.gov>  
**Cc:** Miller, Kevin <Miller.Kevin@epa.gov>  
**Subject:** RE: Latest version of the letter and instructions

<http://www.eenews.net/greenwire/2017/03/29/stories/1060052264>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 30 2017

OFFICE OF  
WATER

Eve Gartner, Esq.  
Earthjustice  
48 Wall Street, 19<sup>th</sup> Floor  
New York, NY 10005

RE: Amended Freedom of Information Act Response EPA-HQ-2012-001337

Dear Ms. Gartner:

The United States Environmental Protection Agency (EPA) is providing you with an amended response to the above-referenced Freedom of Information Act (FOIA) request for data the EPA collected from states regarding concentrated animal feeding operations and other sources. This amended response to your FOIA request fulfills EPA's obligations under the Stipulation for Settlement and Dismissal in American Farm Bureau Federation v. EPA, Civ. No. 13-1751 (D. Minn.).

The amended response is available at:  
<https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d28000843a>.

EPA fully responded to your FOIA request on April 30, 2013. I am requesting that you return the materials the Agency previously provided you in response to the above-noted FOIA request or destroy all copies of those materials and cease any further or ongoing dissemination of the same. Please return the previously released materials or confirm, by email to Quoc Nguyen ([nguyen.quoc@epa.gov](mailto:nguyen.quoc@epa.gov)) or mail to (Office of General Counsel, William Jefferson Clinton North MC 2377A, 1200 Pennsylvania Avenue, NW, Washington, DC 20460), that all copies of such materials have been destroyed, and please do so by April 30, 2017.

Please contact Quoc Nguyen at 202-564-6343 if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Nagle", is positioned above the printed name.

Deborah Nagle  
Director of the Water Permits Division  
Office of Water



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 30 2017

OFFICE OF  
WATER

Jon P. Devine, Jr.  
Senior Attorney, Water Program  
Natural Resources Defense Council  
1152 15<sup>th</sup> Street NW, Suite 300  
Washington, DC 20005

RE: Amended Freedom of Information Act Response EPA-HQ-2013-001516

Dear Mr. Devine:

The United States Environmental Protection Agency (EPA) is providing you with an amended response to the above-referenced Freedom of Information Act (FOIA) request for data the EPA collected from states regarding concentrated animal feeding operations and other sources. This amended response to your FOIA request fulfills EPA's obligations under the Stipulation for Settlement and Dismissal in American Farm Bureau Federation v. EPA, Civ. No. 13-1751 (D. Minn.).

The amended response is available at:  
<https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d28001613d>.

EPA fully responded to your FOIA request on April 30, 2013. I am requesting that you return the materials the Agency previously provided you in response to the above-noted FOIA request or destroy all copies of those materials and cease any further or ongoing dissemination of the same. Please return the previously released materials or confirm, by email to Quoc Nguyen ([nguyen.quoc@epa.gov](mailto:nguyen.quoc@epa.gov)) or mail to (Office of General Counsel, William Jefferson Clinton North MC 2377A, 1200 Pennsylvania Avenue, NW, Washington, DC 20460), that all copies of such materials have been destroyed, and please do so by April 30, 2017.

Please contact Quoc Nguyen at 202-564-6343 if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Nagle", is positioned above the printed name.

Deborah Nagle  
Director of the Water Permits Division  
Office of Water

**To:** Levine, MaryEllen[levine.maryellen@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Nagle, Deborah[Nagle.Deborah@epa.gov]; Molloy, Jennifer[molloy.jennifer@epa.gov]; Marentette, Pamela (USAMN)[Pamela.Marentette@usdoj.gov]  
**From:** Nguyen, Quoc  
**Sent:** Thur 3/30/2017 2:09:46 PM  
**Subject:** article on settlement agreement

FYI

**From:** Gottesman, Larry  
**Sent:** Thursday, March 30, 2017 10:03 AM  
**To:** Nguyen, Quoc <Nguyen.Quoc@epa.gov>  
**Cc:** Miller, Kevin <Miller.Kevin@epa.gov>  
**Subject:** RE: Latest version of the letter and instructions

<http://www.eenews.net/greenwire/2017/03/29/stories/1060052264>



**To:** Nguyen, Quoc[Nguyen.Quoc@epa.gov]  
**Cc:** Miller, Kevin[Miller.Kevin@epa.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]  
**From:** Marentette, Pamela (USAMN)  
**Sent:** Wed 11/8/2017 3:32:27 PM  
**Subject:** RE: Privacy training completed (AFBF v. EPA)

Excellent! Thanks for the update. I hope you are all doing well. Pam

Pamela A. Marentette

Assistant U.S. Attorney

District of Minnesota

600 U.S. Courthouse

300 South Fourth Street

Minneapolis, MN 55415

(612) 664-5652

pamela.marentette@usdoj.gov

**From:** Nguyen, Quoc [mailto:Nguyen.Quoc@epa.gov]  
**Sent:** Wednesday, November 08, 2017 9:06 AM  
**To:** Marentette, Pamela (USAMN) <pmarentette@usa.doj.gov>  
**Cc:** Miller, Kevin <Miller.Kevin@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>  
**Subject:** Privacy training completed (AFBF v. EPA)

Hi Pam!

I hope all is well. I wanted to let you know that we conducted the privacy training yesterday for the Office of Water managers.

Thus, EPA fulfilled all of its obligations under the AFBF settlement agreement.

Sincerely,

Quoc

Quoc P. Nguyen

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-564-6343

PRIVILEGED COMMUNICATION for internal deliberation only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

**To:** Schwarz, Matthew[Schwarz.Matthew@epa.gov]; Nguyen, Quoc[Nguyen.Quoc@epa.gov]  
**Cc:** Miller, Kevin[Miller.Kevin@epa.gov]  
**From:** Shapiro, Melissa  
**Sent:** Tue 11/7/2017 4:07:44 PM  
**Subject:** RE: Privacy Training Revision?  
OW Privacy Training Nov 7 2017.pptx

duplicate

Melissa Shapiro

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

[shapiro.melissa@epa.gov](mailto:shapiro.melissa@epa.gov)

202-564-2890

**From:** Schwarz, Matthew  
**Sent:** Tuesday, November 7, 2017 9:13 AM  
**To:** Shapiro, Melissa <[shapiro.melissa@epa.gov](mailto:shapiro.melissa@epa.gov)>; Nguyen, Quoc <[Nguyen.Quoc@epa.gov](mailto:Nguyen.Quoc@epa.gov)>  
**Cc:** Miller, Kevin <[Miller.Kevin@epa.gov](mailto:Miller.Kevin@epa.gov)>  
**Subject:** RE: Privacy Training Revision?

**Ex. 5 - Deliberative Process**

**From:** Shapiro, Melissa  
**Sent:** Monday, November 06, 2017 12:10 PM  
**To:** Nguyen, Quoc <[Nguyen.Quoc@epa.gov](mailto:Nguyen.Quoc@epa.gov)>; Schwarz, Matthew <[Schwarz.Matthew@epa.gov](mailto:Schwarz.Matthew@epa.gov)>  
**Cc:** Miller, Kevin <[Miller.Kevin@epa.gov](mailto:Miller.Kevin@epa.gov)>

**Subject:** RE: Privacy Training Revision?

Final ppt for the program is attached (notes are cleared).

Melissa Shapiro

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

[shapiro.melissa@epa.gov](mailto:shapiro.melissa@epa.gov)

202-564-2890

**From:** Nguyen, Quoc

**Sent:** Monday, November 6, 2017 10:29 AM

**To:** Shapiro, Melissa <[shapiro.melissa@epa.gov](mailto:shapiro.melissa@epa.gov)>; Schwarz, Matthew  
<[Schwarz.Matthew@epa.gov](mailto:Schwarz.Matthew@epa.gov)>

**Subject:** RE: Privacy Training Revision?

Sounds good. Thanks, Melissa.

**From:** Shapiro, Melissa

**Sent:** Monday, November 06, 2017 10:29 AM

**To:** Schwarz, Matthew <[Schwarz.Matthew@epa.gov](mailto:Schwarz.Matthew@epa.gov)>; Nguyen, Quoc  
<[Nguyen.Quoc@epa.gov](mailto:Nguyen.Quoc@epa.gov)>

**Subject:** RE: Privacy Training Revision?

## Ex. 5 - Deliberative Process

Melissa Shapiro

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

[shapiro.melissa@epa.gov](mailto:shapiro.melissa@epa.gov)

202-564-2890

**From:** Schwarz, Matthew

**Sent:** Monday, November 6, 2017 10:28 AM

**To:** Nguyen, Quoc <[Nguyen.Quoc@epa.gov](mailto:Nguyen.Quoc@epa.gov)>; Shapiro, Melissa <[shapiro.melissa@epa.gov](mailto:shapiro.melissa@epa.gov)>

**Subject:** RE: Privacy Training Revision?

## Ex. 5 - Deliberative Process

**From:** Nguyen, Quoc

**Sent:** Monday, November 06, 2017 10:28 AM

**To:** Shapiro, Melissa <[shapiro.melissa@epa.gov](mailto:shapiro.melissa@epa.gov)>; Schwarz, Matthew  
<[Schwarz.Matthew@epa.gov](mailto:Schwarz.Matthew@epa.gov)>

**Subject:** Privacy Training Revision?

Hi Melissa and Matt,

Do you have a revised privacy training? I would like to send it to the program office asap.

Thanks,

Quoc

Quoc P. Nguyen

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-564-6343

PRIVILEGED COMMUNICATION for internal deliberation only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

**To:** Newton, Jonathan[Newton.Jonathan@epa.gov]; Hamilton, Sabrina[Hamilton.Sabrina@epa.gov]; Sandfoss, Kristina[Sandfoss.Kristina@epa.gov]; Kennedy, Chandra[Kennedy.Chandra@epa.gov]; Malloy, Marilyn[Malloy.Marilyn@epa.gov]; Newman, Maya[Newman.Maya@epa.gov]; Ceden-Zambrano, Lorena[Ceden-Zambrano.Lorena@epa.gov]; Williams, LaShawn[williams.lashawn@epa.gov]; Levine, Scott[Levine.Scott@epa.gov]; Barnett-Owens, Inga[Barnett-Owens.Inga@epa.gov]; Evanko, Peter[Evanko.Peter@epa.gov]; McLendon, Wanda[McLendon.Wanda@epa.gov]; Jones-Coleman, Diane[Jones-Coleman.Diane@epa.gov]; Schena, Cristeen[Schena.Cristeen@epa.gov]; Calderon, Wanda[Calderon.Wanda@epa.gov]; Tate, Rita[Tate.Rita@epa.gov]; Gross, Louann[Gross.LouAnn@epa.gov]; Wheatley, Jessica[wheatley.jessica@epa.gov]; Ho, Nancy[Ho.Nancy@epa.gov]; Stevens, Edie[Stevens.Edie@epa.gov]; Albano, Emily[Albano.Emily@epa.gov]; Engels, Alan[engels.alan@epa.gov]; Johnson, Ivry[Johnson.Ivry@epa.gov]; Kercheval, Stephanie[Kercheval.Stephanie@epa.gov]  
**Cc:** Miller, Kevin[Miller.Kevin@epa.gov]; Nguyen, Quoc[Nguyen.Quoc@epa.gov]; Floyd-Coleman, Cynthia[Floyd-coleman.cynthia@epa.gov]; Person, Linda[Person.Linda@epa.gov]; Schumacher, Wendy[schumacher.wendy@epa.gov]; Lewis, Judith[Lewis.Judith@epa.gov]  
**From:** Gottesman, Larry  
**Sent:** Thur 3/30/2017 7:45:54 PM  
**Subject:** FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)  
[FINAL Instructions for Handling CAFO Information Related to AFBF 3-30-17.pdf](#)

I have attached instructions for responding to future FOIA requests that seek concentrated animal feeding operation information (CAFO), at issue in the recently settled AFBF v. EPA FOIA litigation.

Quoc Nguyen from the Office of General Counsel, General Law Office, will be participating in our HQ FOIA Coordinators' meeting on April 4 and our Regional FOIA Officers' call in April 13 to answer your questions. Please disseminate this email and instructions to your FOIA professionals, as appropriate.

Thank you so much for your help in this matter. Please call me if you have any questions.

Larry F. Gottesman

Agency FOIA Officer

202-566-2162 (Direct line)

Ex. 6 - Personal Privacy Mobile)



**Instructions for Handling Concentrated Animal Feeding Operations Information Related to AFBF v. EPA, No. 13-1751 (D. Minn.)  
March 30, 2017**

The Agency recently settled a reverse-Freedom of Information Act (FOIA) case involving certain information related to concentrated animal feeding operations and facilities (CAFOs) for 36 states. Specifically, on March 24, 2017, the U.S. District Court in the District of Minnesota entered a Stipulation of Settlement and Dismissal (Settlement Agreement) in AFBF v. EPA, No. 13-1751 (D. Minn.). See Appendix A, Settlement Agreement.

**The Settlement Agreement requires your attention in the event future FOIA requests seek the information at issue in the settled case.**

Pursuant to the Settlement Agreement, EPA agreed to provide written instructions to Headquarters FOIA Coordinators and Regional FOIA Officers. The instructions below address how the Agency should respond to future FOIA requests for the information at issue in the settled case.

**INSTRUCTIONS**

***Information addressed by this instruction:*** The information at issue in the settled case was the set of 73 documents or spreadsheets responsive to two FOIA requests submitted by Earthjustice (EPA-HQ-2012-001337) and the Natural Resources Defense Council and the Pew Charitable Trusts (EPA-HQ-2013-001516). See Appendix B, the two FOIA requests. The Office of Water's Office of Wastewater Management collected this information about CAFOs from twenty-seven state permitting authorities, eight state websites, EPA databases, and EPA regional offices. The Office of Wastewater Management responded to the two FOIA requests (EPA-HQ-2012-001337 and EPA-HQ-2013-001516) and produced redacted information from the 73 documents or spreadsheets through FOIAonline. The following links will direct you to the Agency's final response to these two requests:

- 1) EPA-HQ-2012-001337:  
<https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d28000843a>
- 2) EPA-HQ-2013-001516:  
<https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d28001613d>

Provided below are examples of FOIA requests the Agency has received that specifically sought the 73 documents or spreadsheets at issue in the settled case.

*Language from FOIA requests seeking the 73 documents or spreadsheets:*

- "Freedom of Information Act request for information related to the withdrawal of the CAFO Reporting Rule, from Eve C. Gartner, Esq., Earthjustice, dated September 11, 2012."

- “Freedom of Information Act request for disclosure of records [related to the withdrawal of the CAFO Reporting Rule]...from Claire Althouse [or Jon Devine], Natural Resources Defense Council, dated October 24, 2012.”
- “All records responsive to FOIA requests 2012-1337 and 2013-1516.”
- “[A]ny records...to the proposed NPDES CAFO Reporting Rule (76 Fed. Reg. 65,431 (Oct. 21, 2011)).”

***Instructions for handling CAFO FOIA requests seeking the 73 documents or spreadsheets at issue in the settled case:*** If EPA receives a FOIA request seeking the 73 documents or spreadsheets or to which the 73 documents or spreadsheets, as described above (*see* “Information addressed by this instruction”), are responsive, you are to respond by referring the requester(s) to FOIAonline and referencing the response provided to EPA-HQ-2012-001337 and EPA-HQ-2013-001516. Please refer to the public URL links above.

If you have any questions, please contact Jenny Molloy, Office of Water, at 202-564-1939 or Quoc Nguyen, Office of General Counsel, at 202-564-6342.

**APPENDIX A: Settlement Agreement**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 13-1751 (ADM/TNL)

AMERICAN FARM BUREAU  
FEDERATION, and NATIONAL PORK  
PRODUCERS COUNCIL

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY, and GINA MCCARTHY,<sup>1</sup>  
Administrator U.S. Environmental Protection  
Agency,

Defendants,

and

FOOD & WATER WATCH,  
ENVIRONMENTAL INTEGRITY  
PROJECT, AND IOWA CITIZENS FOR  
COMMUNITY IMPROVEMENT,

Intervenors.

**STIPULATION OF SETTLEMENT  
AND DISMISSAL**

WHEREAS, on July 5, 2013, Plaintiffs, the American Farm Bureau Federation (“AFBF”) and National Pork Producers Council (“NPPC”) (together, “Plaintiffs”), filed their Complaint for Declaratory and Injunctive Relief (“Complaint”), alleging a claim under the Administrative Procedure Act and seeking an Order enjoining the U.S.

---

<sup>1</sup> Scott Pruitt is now the Administrator of EPA. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Mr. Pruitt should be substituted for Gina McCarthy as defendant in this suit.

Environmental Protection Agency ("EPA") from disclosing certain information (referred to herein as the "disputed information") in response to Freedom of Information Act ("FOIA") requests submitted by Earthjustice (EPA-HQ-2012-001337) and the Natural Resources Defense Council and the Pew Charitable Trusts (EPA-HQ-2013-001516).

WHEREAS, the disputed information consists of a set of 73 documents ("disputed information") that EPA collected from twenty-seven state permitting authorities, eight state websites, EPA databases, and EPA regional offices, following the Agency's determination to compile reliable information about concentrated animal feeding operations ("CAFOs") in the United States using existing data sources rather than promulgating a rule requiring CAFOs to submit information directly to EPA.

WHEREAS, in this lawsuit, Plaintiffs allege that portions of the disputed information are protected by Exemption 6 of the FOIA, which pertains to "[p]ersonnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

WHEREAS, the disputed information consists of data pertaining to animal feeding operations, which is aggregated by state, for the following states: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.

WHEREAS, the disputed information was filed in the administrative record in this matter, at ECF. No. 69, Exhibits 16 and 32.

WHEREAS, Plaintiffs, AFBF and NPPC, and Defendants, Administrator Scott Pruitt and EPA, wish to avoid any further litigation and controversy and to settle and

compromise fully any and all claims and issues that have been raised, or could have been raised in this action, which have transpired prior to the execution of this Stipulation of Settlement and Dismissal ("Stipulation").

Now, therefore, the parties, by and through their respective counsel, hereby settle and compromise the above-captioned lawsuit. The parties stipulate that this matter is hereby settled and compromised on the following terms:

1. Defendants agree that only the columns reflecting permit status, city, county, and 5-digit zip code in the disputed information, which, as defined above, consists of 73 documents set forth at ECF No. 69, Exhibits 16 and 32, will be released in response to the FOIA requests at issue in this case, EPA-HQ-2012-001337 and EPA-HQ-2013-001516. All other columns and fields in the disputed information will be redacted pursuant to 5 U.S.C. § 552(b)(6).

2. Defendants have provided, and Plaintiffs have reviewed, the disputed information with the agreed-upon redactions, and those redactions are attached hereto as Exhibit A.

3. Defendants also agree to release the same redacted disputed information, as set forth in Exhibit A, in response to the following pending FOIA requests submitted to EPA Headquarters that seek the disputed information: (1) EPA-HQ-2013-006737; (2) EPA-HQ-2013-006604; (3) EPA-HQ-2013-004128; (4) EPA-HQ-2013-008906; (5) EPA-HQ-2013-007430; (6) EPA-HQ-2013-006913; (7) EPA-HQ-2013-004097; (8) EPA-HQ-2015-004064; (9) EPA-HQ-2015-006732; and (10) EPA-HQ-2016-008563.

Defendants further agree to post the redacted disputed information, responsive to the

FOIA requests identified in Paragraphs 1 and 3, to FOIAonline ([www.FOIAonline.regulations.gov](http://www.FOIAonline.regulations.gov)), consistent with 5 U.S.C. § 552(a)(2)(D).

4. Within 7 calendar days of the execution of this Stipulation, Defendants will provide the redacted disputed information, set forth at Exhibit A, in response to the FOIA requests identified in Paragraphs 1 and 3 above.

5. Within 7 calendar days of the execution of this Stipulation, Defendants will request in writing that the FOIA requesters in EPA-HQ-2012-001337 and EPA-HQ-2013-001516 return to EPA or destroy all copies of any previous responses to those FOIA requests and cease any further or ongoing dissemination of the same.

6. This Stipulation does not bind Defendants with respect to its response to any FOIA request other than the FOIA requests identified in Paragraphs 1 and 3 of this Stipulation. Within 7 calendar days of execution of this Stipulation, Defendants agree to provide written instruction to EPA's Regional and Headquarters FOIA coordinators that if they receive a FOIA request seeking the disputed information, as defined above, they are to respond by referring the requester(s) to FOIAonline and referencing the response provided to EPA-HQ-2012-001337 and EPA-HQ-2013-001516. This instruction will also be included in the training described below in paragraph 7.

7. Defendants agree to conduct training for managers in EPA's Office of Water and Regional and Headquarters FOIA coordinators regarding the Agency's obligations under the FOIA and the Privacy Act. Among other things, the training will focus on Exemption 6 of the FOIA, the Privacy Act, and other relevant privacy issues. The training will be conducted in the 2017 calendar year.

8. Plaintiffs agree to dismiss this lawsuit with prejudice. Such dismissal shall be effected via the stipulation of voluntary dismissal with prejudice per Fed. R. Civ. P. 41(a)(1)(A)(ii) that is attached hereto as Exhibit B. The parties shall file with the Court such stipulation of dismissal within ten business days of execution of this Stipulation.

9. This Stipulation constitutes the full and complete satisfaction of any and all claims on behalf of Plaintiffs arising from (a) the allegations set forth in the complaint filed in this lawsuit and (b) any litigation or administrative proceeding that Plaintiffs have brought, could bring, or could have brought against Defendants regarding the specific FOIA requests identified in Paragraphs 1 and 3 of this Stipulation, including all claims for attorneys' fees and costs. Any and all remaining claims and issues in this litigation are released and waived by all parties.

10. This Stipulation does not constitute an admission of liability or fault on the part of Defendants, the EPA, or its agents, servants, or employees, and this Stipulation shall not be construed as an admission of liability or fault. This Stipulation is entered into by both parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks of further litigation. This Stipulation will not be used in any manner to establish liability for fees, amounts, or hourly rates, in any other case or proceeding.

11. This Stipulation is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

12. Each party will bear its own attorney's fees and costs.

13. The undersigned attorneys are authorized to enter into this Stipulation of Settlement on behalf of their respective clients.

14. This Stipulation may be executed in counterparts as if executed by both parties on the same document.

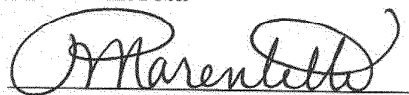
[Signatures next page]



U.S. ENVIRONMENTAL PROTECTION AGENCY &  
E. SCOTT PRUITT, ADMINISTRATOR

GREGORY G. BROOKER  
Acting United States Attorney  
District of Minnesota

BY:



Pamela A. Marentette  
Assistant United States Attorney

DATE: March 23, 2017

AMERICAN FARM BUREAU FEDERATION

BY:

Ellen Steen,  
General Counsel & Secretary

DATE: \_\_\_\_\_

NATIONAL PORK PRODUCERS COUNCIL

BY:

Michael Formica,  
Assistant Vice President & Counsel, Domestic Policy

DATE: \_\_\_\_\_



**EARTHJUSTICE**

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES  
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

**RECEIVED**  
SEP 12 2012

September 11, 2012

By Email: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566-1667 FAX (202) 566-2147  
E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

Re: Freedom of Information Request for information related to the withdrawal of the  
CAFO Reporting Rule

Dear Freedom of Information Officer:

Earthjustice submits this request for records in accordance with the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In accordance with FOIA, please provide us with the following records relating to the rule proposed by the Environmental Protection Agency ("EPA") on October 21, 2011, under section 308 of the Clean Water Act, to collect information about concentrated animal feeding operations (CAFOs) (the "CAFO Reporting Rule"), and the withdrawal of the CAFO Reporting Rule announced by EPA on July 20, 2012:

1. All records, including all communications, shared or otherwise maintained between EPA and any other governmental agency (including, but not limited to, the United States Department of Agriculture and/or the United States Geological Survey) relating to the CAFO Reporting Rule and/or the 2012 withdrawal of the CAFO Reporting Rule ;
2. All records reflecting any communication, written or verbal, between the EPA and any private party, corporation or non-profit organization (including, but not limited to, the National Pork Producers Council, the American Farm Bureau Federation, the National Chicken Council, the U.S. Poultry & Egg Association, and the National Milk Producer's Federation) relating to the CAFO Reporting Rule and/or the 2012 withdrawal of the CAFO Reporting Rule;
3. All records created or updated since November 28, 2008, relating to EPA's evaluation of information publicly available about CAFOs in the United States.
4. All records, including, but not limited to, all communications and records identifying, discussing, mentioning, describing, reporting or analyzing, the July 2012 memorandum of understanding (MOU) entitled "Collaborative Efforts to Collect and

156 WILLIAM STREET SUITE 800 NEW YORK, NY 10038

T: 212.791.1881 F: 212.918.1556 E: [neoffice@earthjustice.org](mailto:neoffice@earthjustice.org) W: [www.earthjustice.org](http://www.earthjustice.org)

Exchange Information about Concentrated Animal Feeding Operations" entered into between EPA and the Association of Clean Water Administrators;

5. All records relating to how EPA will obtain information about CAFOs in states for which current site-specific information about CAFOs is not available on the internet, including, at a minimum, CAFOs in Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Puerto Rico, U.S. Virgin Islands, West Virginia, Georgia, Illinois, Minnesota, Kansas, Nevada, Alaska, Idaho, and Washington;
6. All records relating to and/or identifying existing sources of information about CAFOs, including the AFOs themselves, and EPA's proposed and intended data collection process for gathering that information.

The use of the word "record" above includes, but is not limited to, documents in all forms (including electronic), information, emails, faxes, letters, comments, reports, summaries of telephone conversations, handwritten notes, meeting minutes, or any other materials. **EPA need not produce documents that are part of the docket for the CAFO Reporting Rule (Docket EPA-HQ-QW-2011-0188) as posted on Regulations.gov.**

The use of the word "unredacted" above means that we are seeking full disclosure of all information in the requested record. In the event that you determine that you can disclose only some of the information contained in a record that falls within the scope of this request, please provide us with a copy of the record with only the information that you have determined to be properly treated as confidential redacted.

If any information requested herein was, but is no longer, in EPA's possession or subject to its control, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred voluntarily or involuntarily to others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding and authorization for such disposition of it and state the date or approximate date of it.

If you claim that any of the foregoing information is exempt from mandatory disclosure, we respectfully request that you:

- (1) Provide an index of all documents containing the requested information, reflecting the date, author, addressee, number of pages, and subject matter of such documents;
- (2) State the exemption you deem to be applicable to each information request;
- (3) State with particularity the reason why such exemption is applicable to each information request;
- (4) Examine each information request to determine if reasonably segregable non-exempt information exists which may be released after redacting information deemed to be exempt; and
- (5) Exercise your discretion to release such records notwithstanding the availability of a basis for withholding.

#### **FEE WAIVER REQUEST**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), we request a fee waiver because "disclosure of the requested information is in the public interest because it is likely to contribute significantly to

public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *Id.* As demonstrated below, each of the four factors related to the first fee waiver requirement, as specified in EPA’s FOIA regulations at 40 C.F.R. § 2.107(l)(2)(i)-(iv), weigh in favor of granting our fee waiver request.

***Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.***

The subject matter of the requested records concerns “identifiable operations or activities of the Federal government,” 40 C.F.R. § 2.107(l)(2)(i), insofar as the requests relate to EPA’s proposal to promulgate the CAFO Reporting Rule and its subsequent decision to withdraw is proposal to promulgate such a rule.

***Factor 2: Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities.***

Disclosure of the requested records is “likely to contribute” to an “increased public understanding,” 40 C.F.R. § 2.107(l)(2)(ii), of government operations or activities because such disclosure will enable the requester to understand why EPA decided to withdraw the CAFO Reporting Rule, and how EPA expects to be able to develop facility-specific information about all the CAFOs in the United States, including facility location and basic operational characteristics that relate to how and why a facility may discharge, without requiring CAFOs to report this information to EPA. This information is not already accessible through EPA’s website. *See* Factor 4, below.

***Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience of Persons Interested in How the Government Decided Not to Require CAFOs to Report and in How the Government Will Identify CAFOs that Are Discharging, But Are Not in the NPDES Program***

Disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in” learning about the Government’s efforts to regulate CAFOs under the Clean Water Act, and how EPA can comply with its mandates under the Clean Water Act without gathering the information it would have received under the CAFO Reporting Rule. This is because Earthjustice, the requesting organization, is a national nonprofit environmental law firm which has made safeguarding the environment, including especially the nation’s waters, one of its top priorities and has developed expertise in this area. In order to further its work to protect the nation’s waters, Earthjustice has brought numerous lawsuits seeking to enforce the Clean Water Act, and filed several Clean Water Act petitions with EPA. *See, e.g., Coeur Alaska, Inc. v. Southeast Alaska Conservation Council*, 557 U.S. 261 (2009) (counsel of record for respondents Southeast Alaska Conservation Council, et al. in case involving the discharge of wastewater into Lower Slate Lake); *Friends of Everglades v. South Florida Water Management Dist.*, 570 F.3d 1210 (11th Cir. 2009) (representing plaintiffs in case involving pumping of polluted water into Lake Okeechobee); *Petition under the Clean Water Act to Establish Toxicity Criteria and Require Toxicity Testing and Public Disclosure of Ingredients for Products on the National Contingency Plan Product Schedule* (Oct. 13, 2010),

[http://earthjustice.org/sites/default/files/files/dispersant\\_petition\\_0.pdf](http://earthjustice.org/sites/default/files/files/dispersant_petition_0.pdf). In addition, Earthjustice has filed or intervened in several lawsuits involving pollution emanating from CAFOs. *See, e.g., Waterkeeper Alliance v. EPA*, No. 09-1017 (D.C. Cir. Jan. 15, 2009) (representing petitioners in challenge to regulations exempting from reporting air releases of hazardous substances from animal waste at farms); *Rose Acre Farms, Inc. v. NC Department of Environment and Natural Resources*, No. 12-CVS-10 (Super. Ct. Hyde Cty March 2, 2012) (representing intervenors on side of State agency defending decision to require egg CAFO to operate under NPDES permit). Because of our expertise in this area, Earthjustice is well-prepared to analyze and evaluate the records we receive pursuant to this request and assess them in the context of the statutory mandates of the Clean Water Act and the information already available to EPA about CAFOs, and determine whether EPA's can fulfill its Clean Water Act obligations with respect to CAFOs in light of the decision to withdraw the CAFO Reporting Rule.

In addition to being able to analyze the information provided to determine whether EPA's actions can be reconciled with its obligations under the Clean Water Act, Earthjustice has the "ability and intention to convey this information to the public." 40 C.F.R. § 2.107(l)(2)(iii). Earthjustice can publicize information received from this request – and its analysis of whether the withdrawal of the CAFO Reporting Rule is consistent with the EPA's Clean Water Act's mandates -- in its monthly electronic newsletter, which serves approximately 223,000 subscribers. Earthjustice also can utilize its online action alert system to urge members of the public to contact policymakers and ask them to take action based on information received from this request; typically, 15,000 to 20,000 individuals respond to such alerts. Finally, Earthjustice's full-time health campaigner can disseminate newsworthy information obtained from this request to the media, and Earthjustice's full-time health lobbyist can provide relevant information obtained from this request to elected officials in Washington..

**Factor 4: *The Contribution to Public Understanding of Government Operations or Activities Will Be Significant.***

The public's understanding of government operations or activities related to EPA's knowledge of pollution caused by CAFOs and whether EPA has an adequate plan for determining which CAFOs are discharging pollutants into waters of the United States, "as compared to the level of public understanding existing prior to disclosure, [will] be enhanced by the disclosure to a significant extent." 40 C.F.R. § 2.107(l)(2)(iv). Because so little is publicly known or understood about EPA's plan for learning about, and addressing, discharges from CAFOs in the absence of the CAFO Reporting Rule, public understanding of these efforts will undoubtedly be enhanced to a significant extent by disclosures in response to this request.

In addition, the second fee waiver requirement – that the request "is not primarily in the commercial interest of the requester," 40 C.F.R. § 2.107(l)(1) – is also met here. The requester, Earthjustice, is a 501(c)(3) nonprofit organization and does not have any "commercial interest that would be furthered by the requested disclosure" of information.<sup>1</sup> 40 C.F.R. § 2.107(l)(3)(i).

<sup>1</sup> Indeed, the legislative history of the fee waiver provision reveals that it was added to FOIA "in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests," in particular those from journalists, scholars and nonprofit public interest groups. *See Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984).

Indeed, Requester's sole interest in obtaining the requested information is to broaden public understanding of why EPA withdrew the CAFO Reporting Rule, and whether EPA has a reasonable plan in place to learn about which CAFOs are likely discharging, and to undertake advocacy efforts related to improving EPA's regulation of CAFOs under the Clean Water Act, if appropriate.

In sum, this request meets the requirements for a fee waiver. In the event that fees are not waived, please notify and inform us of the basis for your decision.

#### INSTRUCTIONS FOR RECORD DELIVERY

To the extent that the requested records are available in a readily accessible electronic format, we would prefer to receive the documents electronically, either by email or on a CD. If electronic copies are unavailable, we will accept paper copies. Please send records to Eve C. Gartner at [egartner@earthjustice.org](mailto:egartner@earthjustice.org), or mail them to:

Eve C. Gartner, Esq.  
Earthjustice  
156 William St., Suite 800  
New York, NY 10038-5326

As FOIA requires, we expect your response within twenty working days of your receipt of this request. In the event that you have any questions concerning the type of materials we are interested in receiving, please contact me by email or by telephone at 212-791-1881 ext. 8222.

Thank you for your assistance in this matter.

Sincerely,



Eve C. Gartner

RECEIVED  
SEP 12 2012



new FOIA request  
Eve C. Gartner to: FOIA HQ

09/12/2012 10:07 AM

Dear Sir or Madam –

Attached please find a FOIA request related to the withdrawal by EPA of the CAFO Reporting Rule announced on July 20, 2012.

Many thanks for your attention to this matter.

Eve Gartner

Eve C. Gartner  
Staff Attorney  
Earthjustice  
156 William Street  
Suite 800  
New York, New York 10038  
T: 212-791-1881 ext. 8222  
F: 212-918-1556  
[www.earthjustice.org](http://www.earthjustice.org)

Because the earth needs a good lawyer

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FOIA to EPA - Withdrawal of Reporting Rule-final.pdf



**APPENDIX B: NRDC/PEW FOIA Request (EPA-HQ-2013-001516)**



**FOIA Request- NRDC and Pew Charitable Trusts**  
Althouse, Claire to: FOIA HQ  
Cc: "Devine, Jon", Julie Janovsky , Nathaniel Keller

10/24/2012 06:16 PM

To Whom It May Concern:

I write on behalf of the Natural Resources Defense Council and the Pew Charitable Trusts to request disclosure of records pursuant to the Freedom of Information Act and EPA FOIA regulations. Attached, please find a copy of correspondence mailed today concerning the above-mentioned request.

Sincerely,

Claire Althouse

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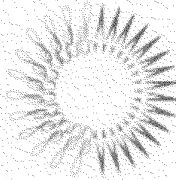
Claire Althouse  
Policy Analyst • Water Program  
Natural Resources Defense Council  
1314 Second Street  
Santa Monica, CA 90401  
T: (310) 434-2300  
F: (310) 434-2399

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Pew-NRDC CAFO FOIA 10-24-12.pdf





THE  
**PEW**  
CHARITABLE TRUSTS

October 24, 2012

Via Regular Mail and Electronic Mail to:

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

**Re: Freedom of Information Act Request for Records Related to EPA's Ability to  
Protect the Public from Concentrated Animal Feeding Operations' Pollution**

To Whom It May Concern:

On behalf of the Natural Resources Defense Council ("NRDC") and the Pew Charitable Trusts, we write to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"),<sup>1</sup> and the Environmental Protection Agency ("EPA") FOIA regulations.<sup>2</sup>

NRDC is comprised of more than 1.3 million members and online activists and over 350 lawyers, scientists, and advocates who are committed to protecting our natural resources for health and future generations. This includes protecting our nation's water supply from pollution caused by animal agriculture.

The Pew Charitable Trusts' Campaign to Reform Industrial Animal Agriculture is dedicated to advancing pollution control policies to mitigate waste from animal agriculture and create a new system that is less damaging to the environment, rural communities and human health.

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<sup>1</sup> 5 U.S.C. § 552.

<sup>2</sup> 40 C.F.R. 2.100 ff.

## **I. Description of Records Sought**

NRDC and the Pew Charitable Trusts ask that EPA please produce all records<sup>3</sup> in EPA's possession, custody or control relating to EPA's withdrawal of the proposed National Pollutant Discharge Elimination System ("NPDES") Concentrated Animal Feeding Operation ("CAFO") Reporting Rule ("Reporting Rule").<sup>4</sup>

These records should include, without limitation:

1. Any records pertaining to the Reporting Rule that are not contained in the public docket for that rule that were submitted to EPA by: The American Farm Bureau Federation, The National Pork Producers Council, The National Cattlemen's Beef Association, The United Egg Producers, The U.S. Poultry & Egg Association, The National Council of Farmer Cooperatives, The National Milk Producers Federation, The National Chicken Council, the National Turkey Federation, The National Corn Growers Association, or any other agricultural trade association.
2. Any records providing factual information concerning the completeness, accuracy, and public accessibility of states' CAFO information in the following areas:
  - a. The legal name of the owner of the CAFO or an authorized representative, their mailing address, email address, and primary telephone number,
  - b. The legal name and address of the CAFO owner/operator, if the name and address of an authorized representative is provided above,
  - c. The location of the CAFO's production area, identified by latitude and longitude and street address,
  - d. If the owner or operator has NPDES permit coverage, the date of issuance of coverage under the NPDES permit, and the permit number,
  - e. For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered area, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more,
  - f. Where the owner or operator land applies manure, litter, and process wastewater, the total number of acres under the control of the owner or operator available for land application,
  - g. If the CAFO is a contract operation, the name and address of the integrator,

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<sup>3</sup> The term "records" is used herein to mean anything denoted by the use of that word or its singular form in the text of FOIA. In particular, the term includes, but is not limited to, all writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored) including, but not limited to, correspondence, minutes of meetings, memoranda, notes, e-mails, notices, facsimiles, charts, tables, presentations, orders and filings.

<sup>4</sup> National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule, 76 Fed. Reg. 65,431 (Oct. 21, 2011) (Docket No. EPA-HQ-OW-2011-0188) [hereinafter *CAFO Reporting Rule*].

- h. Type and capacity of manure storage used at the CAFO.
  - i. Quantity of manure, process wastewater, and litter generated annually by the CAFO,
  - j. If the CAFO land-applies, whether it implements a nutrient management plan for land application,
  - k. If the CAFO land-applies, whether it employs nutrient management practices and keeps records on site consistent with 40 CFR 122.23(e),
  - l. If the CAFO does not land apply, alternative uses of manure, litter and/or wastewater, and
  - m. Whether the CAFO transfers manure off site, and if so, the quantity transferred to recipient(s) of transferred manure.
3. Any records that provide any of items 2.a-m, above, for any CAFO in the U.S.

## **II. Request for Fee Waiver**

NRDC and the Pew Charitable Trusts request that EPA waive the fee that it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be furnished without any charge or at a reduced charge if A) “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government,” and B) “is not primarily in the commercial interest of the requester.”<sup>5</sup> The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as a “representative of the news media” entitled to a reduction of fees under FOIA.<sup>6</sup>

### **A. Disclosure is in the Public Interest and would Contribute Significantly to Public Understanding of the Operations of the Government**

FOIA dictates that a fee waiver should be granted when a disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government.”<sup>7</sup> The records described above shed light on a matter of considerable public interest and concern: the extent to which EPA has the capacity to effectively mitigate water pollution from CAFOs.

As EPA pointed out in the proposed Reporting Rule, “pollutants from manure, litter, and process wastewater can affect human health and the environment.”<sup>8</sup> EPA noted that “despite more than 35 years of regulating CAFOS, reports of water quality impacts from large animal feeding

<sup>5</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 40 CFR 2.107(l).

<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(iii)(II); 40 CFR 2.107(d).

<sup>7</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 40 CFR 2.107(l).

<sup>8</sup> CAFO Reporting Rule, *supra* note 4, at 65,433.

operations persist.”<sup>9</sup> Pollutants commonly found in CAFO waste include nutrients, pathogens, heavy metals, and pharmaceuticals.<sup>10</sup> These pollutants cause toxic algal blooms, human disease, and human reproductive problems.<sup>11</sup> It is of great public concern that waste containing these pollutants is effectively managed and contamination of water resources is avoided.

The Government Accountability Office recommended in a 2008 report to Congress that EPA “should complete the Agency’s effort to develop a national inventory of permitted CAFOs” because “EPA has neither the information it needs to assess the extent to which CAFOs may be contributing to water pollution, nor the information it needs to ensure compliance with the Clean Water Act.”<sup>12</sup> EPA withdrew the Reporting Rule, which would have gathered information EPA needs to perform its duty of protecting public health and water quality. It is therefore in the public interest to determine what “operations or activities” the EPA plans to use to deal with the staggering lack of information about CAFOs and the persistent pollution affiliated with these facilities.

The tailored request in this letter seeks disclosure of important records concerning EPA’s activities that will contribute meaningfully and significantly to public understanding of CAFO pollution. Disclosure of these records will contribute “significantly” to public understanding because NRDC and the Pew Charitable Trusts will disseminate summary and analysis of any newsworthy information conveyed in the requested records.

As a not for profit organization, the Pew Charitable Trusts is well-equipped to analyze and disseminate the requested information, and may use this information to contribute to the public’s understanding of the EPA’s withdrawal of the proposed NPDES CAFO Reporting Rule. The Pew Charitable Trusts could disseminate that information in a number of ways including through the Pew Charitable Trusts’ website, <http://www.pewtrusts.org>, Pew Environment Group’s website, <http://www.pewenvironment.org>, and its publication *The Latest*, which has a circulation of nearly 120,000 people. In addition, it could distribute the information through the state and national media by way of press releases or other media for general public consumption.

NRDC publishes information in its magazine, *OnEarth*, which is distributed to over 150,000 subscribers, for sale to newsstands and bookstores, and free of charge at <http://www.nrdc.org/onearth>. NRDC also has the ability to disseminate information on CAFO pollution through its website, <http://www.nrdc.org>, which is updated daily and draws approximately 2.5 million page views and 700,000 visits per month; its *Nature’s Voice* newsletter on current environmental issues, distributed five times a year to NRDC’s

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<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> U.S. Gov’t Accountability Office, *Concentrated Animal Feeding Operations: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality*, GAO-08-944 5 (2008), page 48.

approximately 650,000 members and online at <http://www.nrdc.org/naturesvoice/>, and other newsletters and alerts. NRDC's *Earth Action* email list has more than 165,000 subscribers who receive biweekly information on urgent environmental issues. This information is also made available through NRDC's online Action Center at <http://www.nrdc.org/legislation/legwatch.asp>. *This Green Life* is an electronic newsletter on environmentally sustainable living distributed by email to 55,000 subscribers and made available online at <http://www.nrdc.org/thisgreenlife/>. NRDC issues press releases; participates in press conferences and interviews with reporters and editorial writers; and has over twenty staff members dedicated to communications work.<sup>13</sup> Finally, NRDC employees provide Congressional testimony, appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books.<sup>14</sup>

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

1. NRDC obtained through a court-enforced FOIA request records of the operations of Bush Administration's Energy Task Force, headed by Vice President Dick Cheney. It made those records available, along with analysis of selected excerpts and links to the administration's index of withheld documents, on NRDC's website at <http://www.NRDC.org/air/energy/taskforce/tfinx.asp>. NRDC's efforts helped to inform the public about an issue that, even before the records' release, had attracted considerable attention.<sup>15</sup>
2. NRDC obtained through a FOIA request a memorandum by ExxonMobil advocating the replacement of a highly respected atmospheric scientist, Dr. Robert Watson, as the head of the Intergovernmental Panel on Climate Change. NRDC used this memorandum to

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<sup>13</sup> See "Communications" staff list at <http://www.nrdc.org/about/staff.asp>.

<sup>14</sup> See, e.g., Tammy Weber, *EPA Can't Regulate Livestock Farms it Can't Find*, Huffington Post, [http://www.huffingtonpost.com/2012/08/02/epa-cant-regulate-livestock\\_n\\_1732414.html](http://www.huffingtonpost.com/2012/08/02/epa-cant-regulate-livestock_n_1732414.html) (Aug. 2, 2012) (quoting NRDC Senior Attorney Jon Devine); Kristin Eberhard and Evan Gillespie, "How LADWP can do right by Angelenos," Op-Ed, L.A. Times (Sept. 11, 2012) (co-authored by NRDC Western Energy and Climate Program Legal Director Kristin Eberhard; Alice Park, "Waste Not," Time Magazine (Sept. 10, 2012) (quoting NRDC Senior Scientist Allen Hershkowitz); Steve Scher, "Food: Why Americans Waste So Much and Ways to Stop," KOUW (Seattle Public Radio), Aug. 30, 2012 (featuring NRDC Scientist Dana Gunders); "Weighing Benefits and Pitfalls of Increased Oil and Gas Production in the U.S.," PBS NewsHour, Aug. 10, 2012 (featuring NRDC Senior Attorney Kate Sinding); "Clean Air in California: What's it Going to Take?" 2012 Environmental Law Conference at Yosemite, Oct. 28, 2012 (featuring NRDC Attorney Adrian Martinez).

<sup>15</sup> See, e.g., Elizabeth Shogren, *Bush Gets One-Two Punch on Energy*, L.A. Times (Mar. 28, 2002), at A22; Bennett Roth, *Houston Energy-Drilling Firm Appears in Documents from Energy Department*, Houston Chronicle (Apr. 12, 2002).



help inform the public about what may have been behind the decision by the Bush Administration to replace Dr. Watson.<sup>16</sup>

3. NRDC incorporated information obtained through FOIA into a 2005 report, published and provided free of charge at NRDC's website,<sup>17</sup> on the impacts of military sonar and other industrial noise pollution on marine life.<sup>18</sup>

Disclosure of the requested documents is "likely to contribute significantly to public understanding" of EPA's activities concerning CAFO pollution<sup>19</sup> because NRDC intends to disseminate any newsworthy information in the released records, and its analysis of such records, to its member base and to the broader public, through one or more of the many communications channels referenced above. As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

**B. NRDC and the Pew Charitable Trusts have no Commercial Interest that would be Furthered by the Requested Information**

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request<sup>20</sup> because "Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'"<sup>21</sup> NRDC and the Pew Charitable Trusts are not-for-profit organizations and, as such, have no commercial interest.

NRDC's and the Pew Charitable Trusts' primary interest in obtaining the above records is to serve the public by disclosing presently non-public information about EPA's ability to protect the public from CAFO pollution. As previously discussed, CAFOs are a significant source of water pollution, and waste from CAFOs contains substances that are hazardous to humans and the environment. Because CAFOs are potentially so harmful to human health and natural places, it is in the public interest to examine how EPA plans to protect against the harmful effects of CAFO pollution.

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<sup>16</sup> See NRDC Press Release and Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," (Apr. 3, 2002); Elizabeth Shogren, *Charges Fly Over Science Panel Pick*, L.A. Times (Apr. 4, 2002).

<sup>17</sup> See <http://www.nrdc.org/wildlife/marine/sound/contents.asp>.

<sup>18</sup> See NRDC, *Sounding the Depths II* (Nov. 2005) (update to a 1999 report). Since the report's publication, the sonar issue has continued to attract widespread public attention. See, e.g., D. Flesher, "Navy testing could devastate whales and dolphins, groups say," Ft. Lauderdale Sun Sentinel, July 13, 2012.

<sup>19</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>20</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 40 CFR 2.107(l)(3).

<sup>21</sup> *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted).

### C. NRDC is a Media Requester

Even if EPA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA.<sup>22</sup> As described previously in this request, NRDC publishes a quarterly magazine, *OnEarth*, which has more than 150,000 subscribers and is available at newsstands and bookstores; publishes a periodic newsletter for its more than 650,000 members nationally; issues regular electronic newsletters, action alerts, public reports and analyses; and maintains a free online library of reports and analyses. These publications routinely include information about current events of interest to the readership and the public. NRDC staff members are also regular contributors to numerous periodicals, books, and the NRDC Switchboard blog, <http://www.switchboard.nrdc.org/>; television, radio, and web programs; and hearings and conferences. CAFO pollution specifically has been featured in some of NRDC's media outlets.<sup>23</sup> As previously noted, information obtained as a result of this request will, if appropriately newsworthy, be disseminated through one or more of NRDC's publications or other suitable channels.

### III. Willingness to Pay Fees Under Protest

Please provide the records above irrespective of the status and outcome of your evaluation of NRDC's and the Pew Charitable Trusts' fee category assertion and fee waiver request. In order to prevent delay in EPA's provision of the requested records, NRDC and the Pew Charitable Trusts state that they will, if necessary and under protest, pay fees in accordance with 40 CFR 2.107. Please consult with me, however, before undertaking any action that would cause the fee to exceed \$500. Such payment will not constitute any waiver of NRDC's and the Pew Charitable Trusts' right to seek administrative or judicial review of any denial of its fee waiver request and/or rejection of its fee category assertion.

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<sup>22</sup> 5 U.S.C. § 552(a)(4)(A)(ii); 40 CFR 2.107(d).

<sup>23</sup> See, e.g., Posting of Jon Devine to NRDC Switchboard Blog, *EPA Chickens Out by Dropping Industrial Livestock Information Collection Effort*, (July 24, 2012), <http://switchboard.nrdc.org/blogs/idevine/epa-chickens-out-by-dropping-i.html>; Dan Rosen, *Cow Woes*, *OnEarth Magazine* (Aug. 26, 2012), available at <http://www.onearth.org/article/cow-woes>.

#### IV. Conclusion

We trust that, in responding to this request, EPA will comply with all relevant deadlines and other obligations set forth in FOIA and EPA's regulations.<sup>24</sup>

To the extent that the requested records are available in a readily accessible electronic format, we would prefer to receive documents electronically, either by email or on a CD. If electronic copies are unavailable, we will accept paper copies. Please send records to Jon Devine at [jdevine@nrdc.org](mailto:jdevine@nrdc.org), or mail them to:

Jon Devine  
NRDC  
1152 15<sup>th</sup> Street NW, Suite 300  
Washington, DC 20005

Please produce records on a rolling basis; at no point should EPA's search for or deliberations concerning certain records delay the production of others that EPA has already retrieved and is obliged to produce.

In the event that EPA concludes that some of the records requested above may already be publicly available, we will be happy to discuss those conclusions in an effort to narrow the scope of this request.

Thank you for your prompt attention to this request.

Sincerely,



**Jon P. Devine, Jr.**  
Senior Attorney  
Natural Resources Defense Council  
202-289-6868  
[jdevine@nrdc.org](mailto:jdevine@nrdc.org)



**Karen Steuer**  
Director, Government Relations  
Pew Environment Group  
202-887-8818  
[ksteuer@pewtrusts.org](mailto:ksteuer@pewtrusts.org)

---

<sup>24</sup> See 5 U.S.C. § 552; 40 CFR 2.100 ff.



**To:** Bonnelycke, Nina[Bonnelycke.Nina@epa.gov]  
**From:** Molloy, Jennifer  
**Sent:** Mon 7/10/2017 3:57:11 PM  
**Subject:** FOIA stuff  
FINAL Instructions for Handling CAFO Information Related to AFBF 3-30-17.pdf

Pending FOIA:

EPA-HQ-2017-007206

Also – see attached for our policy on the response to the 8<sup>th</sup> circuit related FOIAs.

Jenny Molloy

U.S. EPA

Water Permits Division

202.564.1939

molloy.jennifer@epa.gov

**From:** Best-Wong, Benita

**Location:** Adobe Connect; Conference Line:

**Ex. 6 - Personal Privacy**

**Importance:** Normal

**Subject:** Mandatory Privacy Training (FOIA Exemption 6 and Privacy Act) for OW Managers

**Start Date/Time:** Tue 11/7/2017 5:00:00 PM

**End Date/Time:** Tue 11/7/2017 6:00:00 PM

Per a settlement agreement with American Farm Bureau Federation and National Pork Producer Council, managers in the Office of Water are required to participate in a one-hour training session on privacy, specifically Exemption 6 of the Freedom of Information Act and the Privacy Act. This webinar session will be conducted via Adobe Connect and will be recorded for those who cannot make this session. All OW managers must complete the training during this time or via the recorded session no later than **December 22, 2017**.

**Adobe Connect Link:** <http://epawebconferencing.acms.com/privacy/>

POCs: Jenny Molloy, OWM

Quoc Nguyen, OGC

**To:** Jones-Coleman, Diane[Jones-Coleman.Diane@epa.gov]  
**From:** Nagle, Deborah  
**Sent:** Fri 3/31/2017 8:38:08 PM  
**Subject:** Re: FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)

Thanks Diane

Sent from my iPhone

On Mar 31, 2017, at 1:53 PM, Jones-Coleman, Diane <[Jones-Coleman.Diane@epa.gov](mailto:Jones-Coleman.Diane@epa.gov)> wrote:

Good afternoon everyone,

The HQ FOIA Officer has provided the FOIA community with instructions for responding to future FOIA requests that seek concentrated animal feeding operation information (CAFO), at issue in the recently settled AFBF v. EPA FOIA litigation. See attachment.

If you have questions regarding these instructions, please contact Quoc Nguyen, General Law Office, at 202-564-6343 or Larry Gottesman, HQ FOIA Officer, at 202-566-2162.

Thank you.

**Diane**

Diane C. Coleman

OW FOIA Coordinator and SPOC  
(202) 564-0379  
E-mail: [Jones-Coleman.Diane@epa.gov](mailto:Jones-Coleman.Diane@epa.gov)

<FINAL Instructions for Handling CAFO Information Related to AFBF 3-30-17.pdf>

**To:** Neugeboren, Steven[Neugeboren.Steven@epa.gov]  
**From:** Levine, MaryEllen  
**Sent:** Tue 3/28/2017 5:34:17 PM  
**Subject:** FW: FOR YOUR REVIEW: AFBF v. EPA Draft FOIA Instructions and Letter to FOIA Requesters  
[AFBF v. EPA settlement agreement PM signature 3-23-17.pdf](#)  
[DRAFT Instructions for Handling CAFO Information Related to AFBF 3-28-17.docx](#)  
[EPA-HQ-2013-001516 Draft FOIA Response 3-27-17.docx](#)

**Duplicate**

WIF Ex. 5 - Deliberative Process; ACC

Very short turn around time.

- **Mary Ellen**

Mary Ellen Levine

Assistant General Counsel

Water Law Office, Office of General Counsel

7510 C WJC North

(202) 564-5487

**From:** Nguyen, Quoc  
**Sent:** Tuesday, March 28, 2017 1:32 PM  
**To:** Blake, Wendy <Blake.Wendy@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Cc:** Levine, MaryEllen <levine.maryellen@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Miller, Kevin <Miller.Kevin@epa.gov>; Nagle, Deborah <Nagle.Deborah@epa.gov>; Molloy, Jennifer <molloy.jennifer@epa.gov>  
**Subject:** FOR YOUR REVIEW: AFBF v. EPA Draft FOIA Instructions and Letter to FOIA Requesters  
**Importance:** High

Hi Wendy and Steve,

Attached are two items for your immediate review:

- 1) FOIA Instructions for FOIA Coordinators and Officers
- 2) Letter to the two original FOIA Requesters asking to destroy or return the information

**Deadline for Review: COB WEDNESDAY, March 29, 2017** (I'm sorry for this tight turnaround. The documents are pretty short.)

I am also attaching the final settlement agreement for your reference.

Sincerely,

Quoc

Quoc P. Nguyen

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-564-6343

PRIVILEGED COMMUNICATION for internal deliberation only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.



**To:** Wall, Tom[Wall.Tom@epa.gov]  
**Cc:** Nguyen, Quoc[Nguyen.Quoc@epa.gov]  
**From:** Shapiro, Melissa  
**Sent:** Tue 11/7/2017 5:56:08 PM  
**Subject:** RE: Could you please share the powerpoint from the privacy training? Thank you,  
[OW Privacy Training Nov 7 2017.pptx](#)

Hi Tom,

Of course, see attached. I believe that Quoc will also upload the presentation to the calendar invite.

Melissa Shapiro

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

[shapiro.melissa@epa.gov](mailto:shapiro.melissa@epa.gov)

202-564-2890

**From:** Wall, Tom  
**Sent:** Tuesday, November 7, 2017 12:53 PM  
**To:** Shapiro, Melissa <[shapiro.melissa@epa.gov](mailto:shapiro.melissa@epa.gov)>  
**Subject:** Could you please share the powerpoint from the privacy training? Thank you,

Tom Wall, Director

Watershed Restoration, Assessment and Protection Division

Office of Wetlands, Oceans and Watersheds

U.S. EPA

[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)

202/564-4179



**To:** Nguyen, Quoc[Nguyen.Quoc@epa.gov]  
**From:** Marentette, Pamela (USAMN)  
**Sent:** Fri 3/24/2017 2:31:43 PM  
**Subject:** FW: Activity in Case 0:13-cv-01751-ADM-TNL American Farm Bureau Federation et al v. U.S. Environmental Protection Agency et al Stipulation of Dismissal

Hey-

I'll pull this for you soon and send, but wanted you to have a heads up that it just filed.

Pamela A. Marentette  
Assistant U.S. Attorney  
District of Minnesota  
600 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
(612) 664-5652  
pamela.marentette@usdoj.gov

**From:** ecf-notice@mnd.uscourts.gov [mailto:ecf-notice@mnd.uscourts.gov]  
**Sent:** Friday, March 24, 2017 9:30 AM  
**To:** mndecfnotifications@mnd.uscourts.gov  
**Subject:** Activity in Case 0:13-cv-01751-ADM-TNL American Farm Bureau Federation et al v. U.S. Environmental Protection Agency et al Stipulation of Dismissal

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

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by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court**

**U.S. District of Minnesota**

**Notice of Electronic Filing**

The following transaction was entered by Kimberly, Michael on 3/24/2017 at 9:29 AM CDT and filed on 3/24/2017

**Case Name:** American Farm Bureau Federation et al v. U.S. Environmental Protection Agency et al

**Case Number:** 0:13-cv-01751-ADM-TNL

**Filer:** American Farm Bureau Federation  
National Pork Producers Council

**WARNING: CASE CLOSED on 03/08/2017**

**Document** 156

**Number:**

**Docket Text:**

**STIPULATION of Dismissal by American Farm Bureau Federation, National Pork Producers Council. Jointly Signed by U.S. Environmental Protection Agency, E. Scott Pruitt, Food & Water Watch, Environmental Integrity Project, and Iowa Citizens for Community Improvement. (Attachments: # (1) Final Settlement Agreement)(Kimberly, Michael)**

**0:13-cv-01751-ADM-TNL Notice has been electronically mailed to:**

Chad A Blumenfield [chad.blumenfield@usdoj.gov](mailto:chad.blumenfield@usdoj.gov), [catherine.merle@usdoj.gov](mailto:catherine.merle@usdoj.gov),  
[usamn.ecfcivil@usdoj.gov](mailto:usamn.ecfcivil@usdoj.gov)

Daniel Q Poretti [dporetti@nilanjohnson.com](mailto:dporetti@nilanjohnson.com)

David J Warden [dwarden@nilanjohnson.com](mailto:dwarden@nilanjohnson.com), [jjohnson@nilanjohnson.com](mailto:jjohnson@nilanjohnson.com)

Dustan J Cross [dcross@gislason.com](mailto:dcross@gislason.com), [rschwarzrock@gislason.com](mailto:rschwarzrock@gislason.com)

Gary W Koch [gkoch@gislason.com](mailto:gkoch@gislason.com), [sfix@gislason.com](mailto:sfix@gislason.com)

Jeffrey S Gulley [jeffg@whistleblower.org](mailto:jeffg@whistleblower.org)

Matthew C Berger [mberger@gislason.com](mailto:mberger@gislason.com), [emeurer@gislason.com](mailto:emeurer@gislason.com)

Michael B. Kimberly    [mkimberly@mayerbrown.com](mailto:mkimberly@mayerbrown.com), [wdc.docket@mayerbrown.com](mailto:wdc.docket@mayerbrown.com)

Pamela Marentette    [Pamela.Marentette@usdoj.gov](mailto:Pamela.Marentette@usdoj.gov), [CaseView.ECF@usdoj.gov](mailto:CaseView.ECF@usdoj.gov),  
[deb.kapinos@usdoj.gov](mailto:deb.kapinos@usdoj.gov), [muriel.holland@usdoj.gov](mailto:muriel.holland@usdoj.gov)

Tarah Heinzen    [theinzen@fwwatch.org](mailto:theinzen@fwwatch.org)

**0:13-cv-01751-ADM-TNL Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1051215216 [Date=3/24/2017] [FileNumber=5899592-0  
] [18328b7eccb56760e07b37dbc0170da2f6ebe6bcf72bf39ab5dbf6bb2782e5c2019  
90b975212358a9f5f5e8f614032f459fecc97560b81e82a356c0d8a721058]]

**Document description:** Final Settlement Agreement

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1051215216 [Date=3/24/2017] [FileNumber=5899592-1  
] [230e0a7388f3ad7759ea2b474b28439c1a51c3c6f1631d99d44897e22dcd26a5e07  
9076ea367be0bd69fb8cce823210126ebfe5d21f0076ec3e6e3f2306e1a60]]

**To:** Nagle, Deborah[Nagle.Deborah@epa.gov]  
**Cc:** Nguyen, Quoc[Nguyen.Quoc@epa.gov]; Molloy, Jennifer[molloy.jennifer@epa.gov]  
**From:** Ferris, Lena  
**Sent:** Wed 4/19/2017 3:54:29 PM  
**Subject:** RE: question regarding permit information for CAFOs allowable for release in response to FOIA request

Yes will do.

**From:** Nagle, Deborah  
**Sent:** Wednesday, April 19, 2017 11:52 AM  
**To:** Ferris, Lena <Ferris.Lena@epa.gov>  
**Cc:** Nguyen, Quoc <Nguyen.Quoc@epa.gov>; Molloy, Jennifer <molloy.jennifer@epa.gov>  
**Subject:** FW: question regarding permit information for CAFOs allowable for release in response to FOIA request

Hi Lena-

Can you send the invite for the Ag Advisors' conference call on 24 APR to Quoc Nguyen and Jennifer Molloy. Thanks

-Deborah

**From:** Nguyen, Quoc  
**Sent:** Wednesday, April 19, 2017 11:16 AM  
**To:** Nagle, Deborah <Nagle.Deborah@epa.gov>; Molloy, Jennifer <molloy.jennifer@epa.gov>  
**Cc:** Levine, MaryEllen <levine.maryellen@epa.gov>; Ferris, Lena <Ferris.Lena@epa.gov>  
**Subject:** RE: question regarding permit information for CAFOs allowable for release in response to FOIA request

I can attend. Could you send me an invite?

Thanks,

Quoc

**From:** Nagle, Deborah

**Sent:** Wednesday, April 19, 2017 10:45 AM

**To:** Molloy, Jennifer <[molloy.jennifer@epa.gov](mailto:molloy.jennifer@epa.gov)>; Nguyen, Quoc <[Nguyen.Quoc@epa.gov](mailto:Nguyen.Quoc@epa.gov)>

**Cc:** Levine, MaryEllen <[levine.maryellen@epa.gov](mailto:levine.maryellen@epa.gov)>; Ferris, Lena <[Ferris.Lena@epa.gov](mailto:Ferris.Lena@epa.gov)>

**Subject:** FW: question regarding permit information for CAFOs allowable for release in response to FOIA request

**Jennifer and Quoc** -- can you participate in this meeting on Monday to explain what the CAFO FOIA settlement agreement says (and does not say)? There is a lot of confusion out there based on various articles that do not get the facts straight. This will be a meeting just with the Regional Ag Advisors.

Please let me know.

-Deborah

Deborah G. Nagle, Director  
Water Permits Division  
MC 4203M  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
Tel: (202) 564-1185  
FAX: (202) 564-6392

**From:** Ferris, Lena

**Sent:** Wednesday, April 19, 2017 9:55 AM

**To:** Nagle, Deborah <[Nagle.Deborah@epa.gov](mailto:Nagle.Deborah@epa.gov)>

**Subject:** RE: question regarding permit information for CAFOs allowable for release in response to FOIA request

YES -- That would be great. Monday the 24<sup>th</sup> at 3:00 is the next call. Can someone from your staff be available to call in? I will send them all the call in information; let me know who to reach out to.

Your staff can go first along with OGC and take up to 30 minutes. If it is less than that that is fine as well but I imagine the Regions will have many questions.

**From:** Nagle, Deborah

**Sent:** Wednesday, April 19, 2017 9:38 AM

**To:** Ferris, Lena <[Ferris.Lena@epa.gov](mailto:Ferris.Lena@epa.gov)>

**Cc:** Brennan, Ross <[Brennan.Ross@epa.gov](mailto:Brennan.Ross@epa.gov)>; Molloy, Jennifer <[molloy.jennifer@epa.gov](mailto:molloy.jennifer@epa.gov)>; Levine, MaryEllen <[levine.maryellen@epa.gov](mailto:levine.maryellen@epa.gov)>; Nguyen, Quoc <[Nguyen.Quoc@epa.gov](mailto:Nguyen.Quoc@epa.gov)>; Utting, George <[Utting.George@epa.gov](mailto:Utting.George@epa.gov)>; Rathbone, Colleen <[Rathbone.Colleen@epa.gov](mailto:Rathbone.Colleen@epa.gov)>; Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>

**Subject:** RE: question regarding permit information for CAFOs allowable for release in response to FOIA request

Lena-

Do you have a call with just the Regional Ag Advisors. If so, I would like to propose that I have someone from my team (probably OGC) provide information on the substance of the settlement agreement in this case – explaining what it means and what it does not mean.

Let me know. Thanks

Deborah

Deborah G. Nagle, Director  
Water Permits Division  
MC 4203M  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
Tel: (202) 564-1185  
FAX: (202) 564-6392

**From:** Utting, George  
**Sent:** Wednesday, April 19, 2017 9:25 AM  
**To:** Rathbone, Colleen <[Rathbone.Colleen@epa.gov](mailto:Rathbone.Colleen@epa.gov)>; Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>  
**Cc:** Nagle, Deborah <[Nagle.Deborah@epa.gov](mailto:Nagle.Deborah@epa.gov)>; Brennan, Ross <[Brennan.Ross@epa.gov](mailto:Brennan.Ross@epa.gov)>; Molloy, Jennifer <[molloy.jennifer@epa.gov](mailto:molloy.jennifer@epa.gov)>  
**Subject:** RE: question regarding permit information for CAFOs allowable for release in response to FOIA request

Thanks, Colleen. I think this needs an OGC response. I am cc'ing Jenny Molloy, who is working on these issues here, and Ross Brennan and Deborah Nagle.

George Utting  
Water Permits Division (MC-4203M)  
U.S. EPA, 1200 Pennsylvania Avenue, NW,  
Washington, DC 20460-0001  
(202) 564-0744 / Fax (202) 564-6384

**From:** Rathbone, Colleen  
**Sent:** Wednesday, April 19, 2017 9:19 AM  
**To:** Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>; Utting, George <[Utting.George@epa.gov](mailto:Utting.George@epa.gov)>  
**Subject:** question regarding permit information for CAFOs allowable for release in response to FOIA request

All,

See the email below from Region 8's acting ag advisor. I think that the description of what the settlement agreement pertains to and what was agreed to probably needs some clarification. Thanks for your help.

Colleen Rathbone | Unit Manager, Wastewater | U.S. Environmental Protection Agency - Region 8

(p) 303.312.6133 | (f) 303.312.6116

**From:** OBrien, Wendy  
**Sent:** Wednesday, April 19, 2017 6:45 AM  
**To:** Rathbone, Colleen <[Rathbone.Colleen@epa.gov](mailto:Rathbone.Colleen@epa.gov)>  
**Subject:** RE: question regarding permit information allowable for release in response to FOIA request

Thank you!

Wendy O'Brien, DVM, PhD, DABT

Acting Agriculture Advisor

Office of the Regional Administrator

USEPA Region 8

1595 Wynkoop Street

Denver, CO 80202

Phone: 303.312.6712

FAX: 303.312.6882



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**From:** Rathbone, Colleen  
**Sent:** Wednesday, April 19, 2017 6:43 AM  
**To:** OBrien, Wendy <[OBrien.Wendy@epa.gov](mailto:OBrien.Wendy@epa.gov)>; Clark, Amy <[Clark.Amy@epa.gov](mailto:Clark.Amy@epa.gov)>; Boeglin, Michael <[Boeglin.Michael@epa.gov](mailto:Boeglin.Michael@epa.gov)>  
**Subject:** RE: question regarding permit information allowable for release in response to FOIA request

I called Water Permits Division and am waiting to hear back. I do not know the details.

Colleen Rathbone | Unit Manager, Wastewater | U.S. Environmental Protection Agency - Region 8

(p) 303.312.6133 | (f) 303.312.6116

**From:** OBrien, Wendy  
**Sent:** Tuesday, April 18, 2017 3:31 PM  
**To:** Rathbone, Colleen <[Rathbone.Colleen@epa.gov](mailto:Rathbone.Colleen@epa.gov)>; Clark, Amy <[Clark.Amy@epa.gov](mailto:Clark.Amy@epa.gov)>; Boeglin, Michael <[Boeglin.Michael@epa.gov](mailto:Boeglin.Michael@epa.gov)>  
**Subject:** question regarding permit information allowable for release in response to FOIA request

Hi All,

I just finished listening in on a call held by Utah's Dept of Agriculture and Food, in which Don Hall from UDEQ Division of Water gave a presentation on UT's CAFO permitting process to a number of producers attending the meeting. Among a number of participants on the call, there was concern (and confusion) about FOIAs and privacy issues and release of personal information

such as names, addresses, and phone numbers. I committed to clarifying the status of the situation and getting back to my point of contact in UDAF, Jay Olsen, and also Don Hall.

The concern stems from a 2013 incident in which EPA released private information (names, addresses, phone numbers) in response to a FOIA request from environmental groups related to CAFO permits. My understanding is that the American Farm Bureau Federation and the National Pork Producers Council sued EPA, and that an agreement was recently reached between the American Farm Bureau Federation and the National Pork Producers Council and EPA. The agreement is that EPA may release only the following information in response to FOIA requests: city, county, ZIP code, and permit status.

I'm following up with you either because you were mentioned on the call as a point of contact here in the R8 office, or because I found your name listed on EPA's Region 8 website for CAFO or NPDES permits.

If you can please confirm that the information above is correct, or provide clarification, I'd be most appreciative!

Thanks so much.

Wendy

Wendy O'Brien, DVM, PhD, DABT

Acting Agriculture Advisor

Office of the Regional Administrator

USEPA Region 8

1595 Wynkoop Street

Denver, CO 80202

Phone: 303.312.6712

FAX: 303.312.6882

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**To:** Nguyen, Quoc[Nguyen.Quoc@epa.gov]; Prout, Susan[prout.susan@epa.gov]  
**From:** Grubb, Christopher  
**Sent:** Tue 11/21/2017 9:07:36 PM  
**Subject:** RE: Desk Statement on CAFOS

It can wait – thanks Quoc.

Chris

**From:** Nguyen, Quoc  
**Sent:** Tuesday, November 21, 2017 3:06 PM  
**To:** Prout, Susan <prout.susan@epa.gov>  
**Cc:** Grubb, Christopher <Grubb.Christopher@epa.gov>  
**Subject:** Re: Desk Statement on CAFOS

Can we talk on Monday afternoon. If you need an immediate response, then do the exemption 6 balance test. The issues raised issues n the AFBF case should not affect your balancing test.  
Thanks.

Quoc

Sent from my iPhone

On Nov 21, 2017, at 3:46 PM, Prout, Susan <[prout.susan@epa.gov](mailto:prout.susan@epa.gov)> wrote:

Hi Quoc, What we need is any counsel you might be able to provide regarding whether

## **Ex. 5 - Deliberative Process; ACP**

**Susan Prout**

Associate Regional Counsel

U.S. EPA

77 W. Jackson Blvd., C-14J

Chicago, IL 60604

(312) 353-1029

**From:** Nguyen, Quoc

**Sent:** Tuesday, November 21, 2017 2:40 PM

**To:** Prout, Susan <[prout.susan@epa.gov](mailto:prout.susan@epa.gov)>

**Cc:** Grubb, Christopher <[Grubb.Christopher@epa.gov](mailto:Grubb.Christopher@epa.gov)>

**Subject:** RE: Desk Statement on CAFOS

Hi Susan:

I am not sure what you are referring to. Is this something OW may have? I am attaching the final instructions related to the AFBF v. EPA litigation.

Sincerely,

Quoc

**From:** Prout, Susan

**Sent:** Tuesday, November 21, 2017 3:37 PM

**To:** Nguyen, Quoc <[Nguyen.Quoc@epa.gov](mailto:Nguyen.Quoc@epa.gov)>

**Cc:** Grubb, Christopher <[Grubb.Christopher@epa.gov](mailto:Grubb.Christopher@epa.gov)>

**Subject:** Desk Statement on CAFOS

Hi Quoc, Do you have a copy of the desk statement on CAFOS and FOIAs that you could forward to us? Susan

**Susan Prout**

Associate Regional Counsel

U.S. EPA

77 W. Jackson Blvd., C-14J

Chicago, IL 60604

(312) 353-1029

**To:** Nguyen, Quoc[Nguyen.Quoc@epa.gov]  
**From:** Schumacher, Wendy  
**Sent:** Mon 4/3/2017 1:46:11 PM  
**Subject:** FW: FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)  
FINAL Instructions for Handling CAFO Information Related to AFBF 3-30-17.pdf

Quoc,

I'd like to post the attachment on our Intranet site. Is it okay to do this before you present at tomorrow's FOIA Coordinator's meeting?

Thanks, Wendy

**From:** Gottesman, Larry  
**Sent:** Thursday, March 30, 2017 3:46 PM  
**To:** Newton, Jonathan <Newton.Jonathan@epa.gov>; Hamilton, Sabrina <Hamilton.Sabrina@epa.gov>; Sandfoss, Kristina <Sandfoss.Kristina@epa.gov>; Kennedy, Chandra <Kennedy.Chandra@epa.gov>; Malloy, Marilyn <Malloy.Marilyn@epa.gov>; Newman, Maya <Newman.Maya@epa.gov>; Cedeno-Zambrano, Lorena <Cedeno-Zambrano.Lorena@epa.gov>; Williams, LaShawn <williams.lashawn@epa.gov>; Levine, Scott <Levine.Scott@epa.gov>; Barnett-Owens, Inga <Barnett-Owens.Inga@epa.gov>; Evanko, Peter <Evanko.Peter@epa.gov>; McLendon, Wanda <McLendon.Wanda@epa.gov>; Jones-Coleman, Diane <Jones-Coleman.Diane@epa.gov>; Schena, Cristeen <Schena.Cristeen@epa.gov>; Calderon, Wanda <Calderon.Wanda@epa.gov>; Tate, Rita <Tate.Rita@epa.gov>; Gross, Louann <Gross.LouAnn@epa.gov>; Wheatley, Jessica <wheatley.jessica@epa.gov>; Ho, Nancy <Ho.Nancy@epa.gov>; Stevens, Edie <Stevens.Edie@epa.gov>; Albano, Emily <Albano.Emily@epa.gov>; Engels, Alan <engels.alan@epa.gov>; Johnson, Ivry <Johnson.Ivry@epa.gov>; Kercheval, Stephanie <Kercheval.Stephanie@epa.gov>  
**Cc:** Miller, Kevin <Miller.Kevin@epa.gov>; Nguyen, Quoc <Nguyen.Quoc@epa.gov>; Floyd-Coleman, Cynthia <Floyd-coleman.cynthia@epa.gov>; Person, Linda <Person.Linda@epa.gov>; Schumacher, Wendy <schumacher.wendy@epa.gov>; Lewis, Judith <Lewis.Judith@epa.gov>  
**Subject:** FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)  
**Importance:** High

I have attached instructions for responding to future FOIA requests that seek concentrated animal

feeding operation information (CAFO), at issue in the recently settled AFBF v. EPA FOIA litigation.

Quoc Nguyen from the Office of General Counsel, General Law Office, will be participating in our HQ FOIA Coordinators' meeting on April 4 and our Regional FOIA Officers' call in April 13 to answer your questions. Please disseminate this email and instructions to your FOIA professionals, as appropriate.

Thank you so much for your help in this matter. Please call me if you have any questions.

Larry F. Gottesman

Agency FOIA Officer

202-566-2162 (Direct line)

202-689-4588 (Mobile)



**To:** Nguyen, Quoc[Nguyen.Quoc@epa.gov]  
**From:** Marentette, Pamela (USAMN)  
**Sent:** Fri 3/31/2017 2:35:41 PM  
**Subject:** RE: E-mailing: AFBF Outcomes of Settlement Agreement.zip

Thanks! I'll send Michael a short email confirming this.

Pamela A. Marentette

Assistant U.S. Attorney

District of Minnesota

600 U.S. Courthouse

300 South Fourth Street

Minneapolis, MN 55415

(612) 664-5652

pamela.marentette@usdoj.gov

**From:** Nguyen, Quoc [mailto:Nguyen.Quoc@epa.gov]  
**Sent:** Friday, March 31, 2017 9:27 AM  
**To:** Marentette, Pamela (USAMN) <pmarentette@usa.doj.gov>  
**Subject:** E-mailing: AFBF Outcomes of Settlement Agreement.zip

Hi Pam,

Attached are the letters and instructions that were sent yesterday to the FOIA coordinators/officers and the two original FOIA requesters. I'll let you know when we conduct the privacy trainings.

Thanks,

Quoc

Quoc P. Nguyen

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-564-6343

PRIVILEGED COMMUNICATION for internal deliberation only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

**To:** Shapiro, Melissa[shapiro.melissa@epa.gov]  
**Cc:** Nguyen, Quoc[Nguyen.Quoc@epa.gov]  
**From:** Wall, Tom  
**Sent:** Tue 11/7/2017 6:28:06 PM  
**Subject:** RE: Could you please share the powerpoint from the privacy training? Thank you,

Thank you!

Tom Wall, Director

Watershed Restoration, Assessment and Protection Division

Office of Wetlands, Oceans and Watersheds

U.S. EPA

[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)

202/564-4179

**From:** Shapiro, Melissa  
**Sent:** Tuesday, November 07, 2017 12:56 PM  
**To:** Wall, Tom <Wall.Tom@epa.gov>  
**Cc:** Nguyen, Quoc <Nguyen.Quoc@epa.gov>  
**Subject:** RE: Could you please share the powerpoint from the privacy training? Thank you,

Hi Tom,

Of course, see attached. I believe that Quoc will also upload the presentation to the calendar invite.

Melissa Shapiro

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

[shapiro.melissa@epa.gov](mailto:shapiro.melissa@epa.gov)

202-564-2890

**From:** Wall, Tom

**Sent:** Tuesday, November 7, 2017 12:53 PM

**To:** Shapiro, Melissa <[shapiro.melissa@epa.gov](mailto:shapiro.melissa@epa.gov)>

**Subject:** Could you please share the powerpoint from the privacy training? Thank you,

Tom Wall, Director

Watershed Restoration, Assessment and Protection Division

Office of Wetlands, Oceans and Watersheds

U.S. EPA

[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)

202/564-4179

**To:** Nguyen, Quoc[Nguyen.Quoc@epa.gov]  
**From:** Gottesman, Larry  
**Sent:** Thur 3/30/2017 7:33:25 PM  
**Subject:** FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)  
FINAL Instructions for Handling CAFO Information Related to AFBF 3-30-17.pdf

I have attached instructions for responding to future FOIA requests that seek concentrated animal feeding operation information (CAFO), at issue in the recently settled AFBF v. EPA FOIA litigation.

Quoc Nguyen from the Office of General Counsel, General Law Office will be participating in our HQ FOIA Coordinators' meeting on April 4 and our Regional FOIA Officers' call in April 13 to answer your questions. Please disseminate this email and instructions to your FOIA professionals, as appropriate.

Thank you so much for your help in this matter. Please call me if you have any questions.

Larry F. Gottesman

Agency FOIA Officer

202-566-2162 (Direct line)

Ex. 6 - Personal Privacy (Mobile)

**To:** Nguyen, Quoc[Nguyen.Quoc@epa.gov]  
**From:** Marentette, Pamela (USAMN)  
**Sent:** Thur 3/30/2017 3:13:24 PM  
**Subject:** RE: article on settlement agreement

Not bad. Thanks for sending.

Pamela A. Marentette

Assistant U.S. Attorney

District of Minnesota

600 U.S. Courthouse

300 South Fourth Street

Minneapolis, MN 55415

(612) 664-5652

pamela.marentette@usdoj.gov

**From:** Nguyen, Quoc [mailto:Nguyen.Quoc@epa.gov]  
**Sent:** Thursday, March 30, 2017 9:10 AM  
**To:** Levine, MaryEllen <levine.maryellen@epa.gov>; Kupchan, Simma  
<Kupchan.Simma@epa.gov>; Nagle, Deborah <Nagle.Deborah@epa.gov>; Molloy, Jennifer  
<molloy.jennifer@epa.gov>; Marentette, Pamela (USAMN) <pmarentette@usa.doj.gov>  
**Subject:** article on settlement agreement

FYI

**From:** Gottesman, Larry  
**Sent:** Thursday, March 30, 2017 10:03 AM  
**To:** Nguyen, Quoc <Nguyen.Quoc@epa.gov>  
**Cc:** Miller, Kevin <Miller.Kevin@epa.gov>  
**Subject:** RE: Latest version of the letter and instructions

<http://www.eenews.net/greenwire/2017/03/29/stories/1060052264>

**To:** Schumacher, Wendy[schumacher.wendy@epa.gov]  
**From:** Nguyen, Quoc  
**Sent:** Mon 4/3/2017 2:13:49 PM  
**Subject:** Re: FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)

Sure!

Sent from my iPhone

> On Apr 3, 2017, at 9:46 AM, Schumacher, Wendy <schumacher.wendy@epa.gov> wrote:  
>  
> Quoc,  
>  
> I'd like to post the attachment on our Intranet site. Is it okay to do this before you present at tomorrow's FOIA Coordinator's meeting?  
>  
> Thanks, Wendy  
>  
> From: Gottesman, Larry  
> Sent: Thursday, March 30, 2017 3:46 PM  
> To: Newton, Jonathan <Newton.Jonathan@epa.gov>; Hamilton, Sabrina  
> <Hamilton.Sabrina@epa.gov>; Sandfoss, Kristina <Sandfoss.Kristina@epa.gov>; Kennedy, Chandra  
> <Kennedy.Chandra@epa.gov>; Malloy, Marilyn <Malloy.Marilyn@epa.gov>; Newman, Maya  
> <Newman.Maya@epa.gov>; Cedeno-Zambrano, Lorena <Cedeno-Zambrano.Lorena@epa.gov>;  
> Williams, LaShawn <williams.lashawn@epa.gov>; Levine, Scott <Levine.Scott@epa.gov>; Barnett-  
> Owens, Inga <Barnett-Owens.Inga@epa.gov>; Evanko, Peter <Evanko.Peter@epa.gov>; McLendon,  
> Wanda <McLendon.Wanda@epa.gov>; Jones-Coleman, Diane <Jones-Coleman.Diane@epa.gov>;  
> Schena, Cristeen <Schena.Cristeen@epa.gov>; Calderon, Wanda <Calderon.Wanda@epa.gov>; Tate,  
> Rita <Tate.Rita@epa.gov>; Gross, Louann <Gross.LouAnn@epa.gov>; Wheatley, Jessica  
> <wheatley.jessica@epa.gov>; Ho, Nancy <Ho.Nancy@epa.gov>; Stevens, Edie  
> <Stevens.Edie@epa.gov>; Albano, Emily <Albano.Emily@epa.gov>; Engels, Alan  
> <engels.alan@epa.gov>; Johnson, Ivry <Johnson.Ivry@epa.gov>; Kercheval, Stephanie  
> <Kercheval.Stephanie@epa.gov>  
> Cc: Miller, Kevin <Miller.Kevin@epa.gov>; Nguyen, Quoc <Nguyen.Quoc@epa.gov>; Floyd-Coleman,  
> Cynthia <Floyd-coleman.cynthia@epa.gov>; Person, Linda <Person.Linda@epa.gov>; Schumacher,  
> Wendy <schumacher.wendy@epa.gov>; Lewis, Judith <Lewis.Judith@epa.gov>  
> Subject: FOIA Instructions for AFBF v. EPA (CAFO Litigation Settlement Agreement)  
> Importance: High  
>  
>  
> I have attached instructions for responding to future FOIA requests that seek concentrated animal  
> feeding operation information (CAFO), at issue in the recently settled AFBF v. EPA FOIA litigation.  
>  
> Quoc Nguyen from the Office of General Counsel, General Law Office, will be participating in our HQ  
> FOIA Coordinators' meeting on April 4 and our Regional FOIA Officers' call in April 13 to answer your  
> questions. Please disseminate this email and instructions to your FOIA professionals, as appropriate.  
>  
> Thank you so much for your help in this matter. Please call me if you have any questions.  
>  
>  
> Larry F. Gottesman  
> Agency FOIA Officer  
>  
> 202-566-2162 (Direct line)  
> Mobile)  
> Ex. 5 - Personal Privacy



>

> <FINAL Instructions for Handling CAFO Information Related to AFBF 3-30-17.pdf>

**To:** Marentette, Pamela (USAMN)[Pamela.Marentette@usdoj.gov]  
**From:** Nguyen, Quoc  
**Sent:** Fri 3/31/2017 2:27:15 PM  
**Subject:** E-mailing: AFBF Outcomes of Settlement Agreement.zip  
AFBF Outcomes of Settlement Agreement.zip

Duplicate

Hi Pam,

Attached are the letters and instructions that were sent yesterday to the FOIA coordinators/officers and the two original FOIA requesters. I'll let you know when we conduct the privacy trainings.

Thanks,

Quoc

Quoc P. Nguyen

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202-564-6343

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 30 2017

OFFICE OF  
WATER

Eve Gartner, Esq.  
Earthjustice  
48 Wall Street, 19<sup>th</sup> Floor  
New York, NY 10005

RE: Amended Freedom of Information Act Response EPA-HQ-2012-001337

Dear Ms. Gartner:

The United States Environmental Protection Agency (EPA) is providing you with an amended response to the above-referenced Freedom of Information Act (FOIA) request for data the EPA collected from states regarding concentrated animal feeding operations and other sources. This amended response to your FOIA request fulfills EPA's obligations under the Stipulation for Settlement and Dismissal in American Farm Bureau Federation v. EPA, Civ. No. 13-1751 (D. Minn.).

The amended response is available at:  
<https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d28000843a>.

EPA fully responded to your FOIA request on April 30, 2013. I am requesting that you return the materials the Agency previously provided you in response to the above-noted FOIA request or destroy all copies of those materials and cease any further or ongoing dissemination of the same. Please return the previously released materials or confirm, by email to Quoc Nguyen ([nguyen.quoc@epa.gov](mailto:nguyen.quoc@epa.gov)) or mail to (Office of General Counsel, William Jefferson Clinton North MC 2377A, 1200 Pennsylvania Avenue, NW, Washington, DC 20460), that all copies of such materials have been destroyed, and please do so by April 30, 2017.

Please contact Quoc Nguyen at 202-564-6343 if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Nagle", is written over a horizontal line.

Deborah Nagle  
Director of the Water Permits Division  
Office of Water



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 30 2017

OFFICE OF  
WATER

Jon P. Devine, Jr.  
Senior Attorney, Water Program  
Natural Resources Defense Council  
1152 15<sup>th</sup> Street NW, Suite 300  
Washington, DC 20005

RE: Amended Freedom of Information Act Response EPA-HQ-2013-001516

Dear Mr. Devine:

The United States Environmental Protection Agency (EPA) is providing you with an amended response to the above-referenced Freedom of Information Act (FOIA) request for data the EPA collected from states regarding concentrated animal feeding operations and other sources. This amended response to your FOIA request fulfills EPA's obligations under the Stipulation for Settlement and Dismissal in American Farm Bureau Federation v. EPA, Civ. No. 13-1751 (D. Minn.).

The amended response is available at:  
<https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d28001613d>.

EPA fully responded to your FOIA request on April 30, 2013. I am requesting that you return the materials the Agency previously provided you in response to the above-noted FOIA request or destroy all copies of those materials and cease any further or ongoing dissemination of the same. Please return the previously released materials or confirm, by email to Quoc Nguyen ([nguyen.quoc@epa.gov](mailto:nguyen.quoc@epa.gov)) or mail to (Office of General Counsel, William Jefferson Clinton North MC 2377A, 1200 Pennsylvania Avenue, NW, Washington, DC 20460), that all copies of such materials have been destroyed, and please do so by April 30, 2017.

Please contact Quoc Nguyen at 202-564-6343 if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Nagle", is written over a horizontal line.

Deborah Nagle  
Director of the Water Permits Division  
Office of Water